S. HRG. 101-651, PT. 2

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

CONFIRMATION HEARINGS ON APPOINTMENTS TO THE FEDERAL JUDICIARY

SEPTEMBER 26, OCTOBER 3, AND 20, 1989

Part 2

Serial No. J-~~100~~101-6

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
28-022 WASHINGTON : 1990

S 521-40

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

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CONFIRMATION HEARING ON: CONRAD K. CYR, REBECCA BEACH SMITH, MARVIN J. GARBIS, AND STUART M. GERSON

TUESDAY, SEPTEMBER 26, 1989

U.S. Senate,
Committee on the Judiciary,
Washington, DC.

The committee met, pursuant to notice, at 2:25 p.m., in room SD-608, Dirksen Senate Office Building, Hon. Howell Heflin presiding.

Also present: Senators Thurmond, Grassley, and Specter.

OPENING STATEMENT OF SENATOR HEFLIN

Senator Heflin. We will accommodate all Senators that are here and then have hearings on the various individuals and let them do the introductions of their families. The majority leader is here now and has an urgent meeting to go to, and I would like to call on him first to introduce his nominee, along with the other Senator from Maine.

STATEMENT OF HON. GEORGE J. MITCHELL, A U.S. SENATOR FROM THE STATE OF MAINE

Senator Mitchell. Mr. Chairman and members of the committee, thank you very much for your courtesy. My thanks to our colleagues for their courtesy as well. I will be brief.

Conrad Cyr is the U.S. district judge for the district of Maine. I happen to know him very well because he succeeded me in that position. I had known him long before that. He has a distinguished record of service to the people of the State and at the bar. He is a former Assistant United States Attorney, bankruptcy judge, district judge.

I commend the President for making his the first judicial nomination of his administration. There could not have been a better choice. He is, by temperament, by experience, by scholarship, by intelligence, fully qualified to serve on the U.S. Court of Appeals. I wholeheartedly endorse his nomination and I encourage the committee to move promptly on that nomination.

I thank you very much, Mr. Chairman, for accommodating me, and I am very pleased to see Judge Cyr here. I am especially grateful to him because just yesterday, in celebration of the 200th anniversary of the district court in Maine, Judge Cyr arranged for my portrait to be hung in that district court, and so that showed a remarkable ability of timing on his part just immediately preceding this hearing. [Laughter.]

Senator HEFLIN. Well, we have always had rogue's galleries in Alabama.

Senator MITCHELL. Well, mine is the first in the district court in the northern division of Maine. Judge Cyr and I are the only two judges ever to have served in that division, and so I was for him before he hung my portrait. I am really for him now.

Thank you very much, Mr. Chairman. Thank you, Judge Cyr.

Senator HEFLIN. Senator Cohen.

STATEMENT OF HON. WILLIAM S. COHEN, A U.S. SENATOR FROM THE STATE OF MAINE

Senator COHEN. I would assume that everything my junior colleague has said from the State of Maine about Judge Cyr would apply to the senior Senator from Maine, since this is the gentleman that we have selected to be the judge.

I would also say before he leaves that Republicans in Maine have been trying to hang the majority leader for some time now. We were successful in doing that yesterday. [Laughter.]

Mr. Chairman, I will just take a couple of moments to really second what Senator Mitchell has said to the committee. I have known Conrad Cyr for many, many years now. He has a distinguished career. He managed to overcome the handicap of a Yale Law School education, having served with one of our distinguished colleagues from Pennsylvania, Senator Specter.

He was appointed U.S. bankruptcy judge at the age of 29. He served in that capacity for some 20 years. He became the editor of the Bankruptcy Law Journal because of his intellectual grasp of a very complex area of the law. He has been serving now as U.S. district court judge for some 8 years. He was instrumental in helping to fashion some of the reforms in the Bankruptcy Reform Act of 1978.

He is a standing special master of the U.S. district of Maine, the chief judge of the Bankruptcy Appellate Panel of the district of Massachusetts, and currently serves on the U.S. Foreign Intelligence Surveillance Court.

I will give you one little story about Judge Cyr to tell you why I think he is an outstanding choice. When I first started practicing law in Bangor, Judge Cyr, through some misguided notion, picked me as one of the trustees in bankruptcy in a very complicated case. I think at that particular time, they were awarding about $150 in lawyer's fees for cases that involved significant sums.

I had spent about 3½ weeks writing a brief on a matter before Judge Cyr. My law partners thought I was spending far too much time. I think the brief was about 25 or 28 pages. I submitted it to Judge Cyr. He sent me back to my law office, saying it was not good enough and to go back and put more time on it. I spent the next 2 months researching that particular case. The brief ended up almost 80 pages long, and it finally became a matter before the first circuit.

I was angry with Judge Cyr, I might point out, and my partners were angry with him at that time because I had spent so much time for very little financial reward. It was actually a big loss for the firm, but I gained an awful lot of admiration for Judge Cyr, who believed that a good brief was not good enough; it had to be an excellent one.

And I would say that based upon my association with him over the years and the discussions I have had with my colleagues back in the State of Maine, when they say "Your Honor" to Judge Conrad Cyr, it is not only addressing him in a formal way, it is a personal statement about a life of honor that he has lived, and also about the intellectual honesty that he has demonstrated while on the court, and I commend him to you as one of the truly outstanding choices that President Bush has made.

Senator SPECTER. Mr. Chairman, I wonder if I might say just a word at this point.

Senator HEFLIN. Yes.

OPENING STATEMENT OF SENATOR SPECTER

Senator SPECTER. I am delighted to see my law school classmate elevated to the Court of Appeals for the First Circuit. The first circuit is indeed lucky to have him. I noticed Senator Cohen's comment about Yale Law School. That is where Judge Cyr learned to be so demanding.

I had expected the comment about the 80-page brief to conclude that it turned out to be one of Senator Cohen's published works, perhaps his book of poetry. But we can all agree that Judge Cyr will make an excellent addition to the first circuit and I am delighted to see him as a nominee here today.

Senator COHEN. And he is joined by his lovely wife, Diana, in the front row.

Senator HEFLIN. We will allow him to introduce her later on.

I am sure every Senator has things to do. I have to give priority to those who spoke to me first. Senator Sarbanes has spoken to me, and if you will come and introduce.

STATEMENT OF HON. PAUL S. SARBANES, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator SARBANES. Thank you very much, Mr. Chairman. I will be very brief. I appreciate this opportunity. First of all, I would like just as a preliminary to take just a moment to talk about the timetable.

We are often blamed in the Senate, I think unfairly, for delaying nominations, and I can't tell you how pleased I am to be here today to fill this empty seat on the Federal district court in Maryland.

In the spring of 1987, Judge Joseph Young began to discuss his intention to retire on July 18, 1987. He indicated to President Reagan that he would retire on July 31, 1987. That is more than 2 years ago. On August 1, 1987, he assumed senior status.

Marvin Garbis was nominated by President Reagan on July 6, 1988; in other words, almost a year later from the time that the vacancy occurred when the previous judge took senior status. That nomination came here, as you know, then, in the closing months—actually, we then went into a recess, and then the closing few weeks of the last Congress, and was not acted upon.

To President Bush's credit, he has renominated Marvin Garbis, and that took place on August 4, 1989, which was just before our recess. I appreciate the committee scheduling this hearing so promptly. We have now been more than 2 years—2 years and almost 3 months—since this vacancy was available. And I underscore the fact that the delay was not attributable to the Senate or to this committee, but to the executive branch in filling the position.

Mr. Chairman, Marvin Garbis is a very respected attorney in our State. He has had a distinguished career of professional practice and public service. He received his undergraduate education at the Johns Hopkins University, his law degree from Harvard, and he followed that with an LL.M degree from Georgetown Law School.

He began his legal career in the E. Barrett Prettyman fellowship program at Georgetown Law School, amongst other things representing indigent clients. He then went into the Department of Justice for 4 years in the Tax Division.

He returned to his native Baltimore in 1967, where he has had a very successful career in the private practice of law. His specialty has been tax law. He is a nationally recognized expert in this field. He has authored many books and articles. There is an extensive list in his questionnaire, which I commend to the committee.

He has taught at Georgetown, the University of Maryland, and the University of Baltimore law schools. Recently, he became a member of the advisory board of NYU's Federal Tax Institute.

In addition to his accomplishments as a practicing attorney, and particularly as a specialist in tax law, he has been active in bar activities and other endeavors which I think have enhanced the quality of the legal profession.

In the 1970's, he was on the ABA's tax section committee that worked with the Tax Court to draft modern rules of practice and procedure. At the State level, he has been on the board of governors of the State Bar Association and president of the Federal Bar Association.

He has made major contributions in the area of continuing professional education of lawyers in Maryland, having served successfully as secretary, vice president, and president of the Maryland Institute for Continuing Professional Education.

He has been instrumental in establishing a lawyer counseling service which has helped many practicing attorneys overcome problems involving alcoholism and drug abuse, and he has also served on the Special Joint Committee on Gender Bias, which is a committee formed by the chief judge of the Maryland Court of Appeals to identify gender bias in the Maryland judicial system.

I have known Marvin Garbis for a number of years. I have a high regard for his ability. We are very proud of our district court in Maryland and its standards, and he will be an important and welcome addition to it, helping it to respond to its ever-increasing caseload and also helping it to maintain its traditionally high standards.

I am pleased to introduce him to the committee and to recommend him to you for your favorable consideration.

Senator HEFLIN. Senator Mikulski.

STATEMENT OF HON. BARBARA A. MIKULSKI, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator **Mikulski**. Thank you, Mr. Chairman. I just wish to amplify the remarks of my senior Senator. We in Maryland have always pursued a nonpartisan approach to judgeships. We have always tried to work with whoever is President to seek the very best. We feel that in Mr. Garbis, we have such a nominee.

And we know that it is not only a glittering résumé and outstanding legal credentials; those are threshold. We try to also get a sense of justice and a sense of character of the person.

Just a few comments about Mr. Garbis. In addition to seeking the views of the Maryland Bar Association, which Senator Sarbanes did, and so on, we reached out to say what did the other members of the legal community say.

I was particularly taken by what Baltimore's Legal Aid Bureau—the executive director--said about him. He referred to Mr. Garbis as generous over the years in representing pro bono clients with the Legal Aid Bureau; that he was ready and willing to take his considerable talents and make sure that the poor had the same representation as those who could afford to hire outstanding law firms. I think that is an excellent commentary because it demonstrates his desire to really see that justice was done, in addition to clients being served.

The other thing that I was particularly impressed with is that the president of the women's bar association said Mr. Garbis' significant legal talents and temperament would complement the high quality of our Federal bench.

And just on a personal note, I would like to just inform the committee when Mr. Garbis opened his own law firm in Baltimore in the early 1970's, he recruited five female attorneys in a nontraditional field, tax law, and he gave them the opportunity to move through the ranks, and they eventually became partners at a time when women were not especially being moved ahead and had run into what we call in the legal profession, the glass ceiling.

Mr. Garbis obviously practices what the law preaches, and we think he would be a welcome addition to the Federal judiciary serving in the Maryland district court.

Senator **Heflin**. Congresswoman Bentley.

STATEMENT OF HON. HELEN DELICH BENTLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mrs. **Bentley**. Thank you, Mr. Chairman. Mr. Chairman, I was here earlier and I ran over to do a vote on my side in between. But I am delighted to be here to join Senators Sarbanes and Mikulski to talk in behalf of Marvin Garbis, who is President Bush's nominee to serve on the U.S. district court for the district of Maryland.

I am going to talk a little bit about the fact that he is such a self-made man. Following his graduation from high school, Mr. Garbis went to work at a Westinghouse plant in Baltimore County and attended Johns Hopkins University at night.

He won a scholarship which allowed him to obtain his legal education at Harvard School. And while attending night classes at Georgetown University for a master's of law degree, he started his legal career in 1962 as a public defender on 5th Street right here in Washington, DC, and it was after that that he joined the Department of Justice as a trial attorney in the Tax Division, representing the Government in trials in many U.S. district courts in the Northern and Eastern States.

Following his Government service in 1967, as I am sure Senator Sarbanes pointed out, Mr. Garbis then came to Baltimore, hung up his shingle, and started a sole practice. It was during the next 20 years that he built the law firm which Senator Mikulski talked about which had such a national reputation specializing in Federal tax litigation.

It was while building up this practice that he also wrote five books on Federal tax litigation, taught at Maryland law schools and at Georgetown here in Washington. That shows that he has always had public service in his heart. He has been a frequent speaker on tax law at professional seminars all over the country and has been very active in the American, Federal, and Maryland bar associations.

I wish to close by noting that Mr. Garbis was chosen by the president of the Maryland State Bar Association and the chief judge of the circuit court of appeals to serve on the bench and bar Joint Gender Bias Committee. The work of the committee has been a very positive force in the effort to ensure equal justice for all parties in the courts of Maryland.

Thank you, Mr. Chairman.

Senator **Heflin**. Thank you.

The last judge to be introduced is Rebecca Beach Smith by Senator Warner and Senator Robb.

Senator Warner.

STATEMENT OF HON. JOHN W. WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator **Warner**. Thank you, Mr. Chairman, members of the committee. It is my privilege today, first, to be joined by my distinguished colleague, Mr. Robb, to jointly present to the committee and the Senate as a whole the President's nominee to fill a vacancy in the first congressional—excuse me—the First Judicial District of Virginia; it coincides with the first congressional—a distinguished candidate, Rebecca Beach Smith.

She is currently serving as a U.S. magistrate and she will fill the vacancy because of her strong educational and professional background, I am confident, subject to Senate confirmation.

She graduated Phi Beta Kappa from the College of William and Mary, and received a master's degree in city planning and public administration from the University of Virginia, where she ranked first in her class.

I would note that both Senator Robb and I attended the University of Virginia and, to the best of my knowledge, neither of us ranked first in our class.

Senator **Robb**. Exactly right.

Senator **Warner**. She also graduated at the head of her class at the Marshall-Wythe Law School at the College of William and Mary. She is a former clerk to U.S. district judge Clarke in the eastern district of Virginia, and she is a former member of the Norfolk law firm of Willcox & Savage. She has served as a U.S. magistrate since 1985.

Mr. Chairman, in the 11 years I have been privileged to submit to Presidents recommendations for the Federal judiciary, I have never experienced a candidate who garnered wider and more genuine endorsements from his or her professional peers than this nominee.

She is joined here today by her husband, Jack Smith, who is also an attorney with the Chesapeake, VA, law firm of Outland, Gray, O'Keefe, and Hubbard, and by her two sons, Luke and Clark. She is also joined by her mother, Ms. Beach, and her sister and brother-in-law.

Mr. Chairman, this vacancy has been present for over two years and I am very anxious to see that the Senate act expeditiously, and I thank the chairman of this committee, Mr. Biden, and the distinguished ranking member, Mr. Thurmond, for expediting this hearing.

If I could close with a personal note, this fine individual acknowledged that her career began with the full support of her husband, who encouraged her to go to law school and, throughout that period, provided the financial means and the support at home to make it possible. So we recognize today, I think, a husband and wife team who have achieved a goal that I hope more and more women are able to achieve.

She will be, subject to Senate confirmation, the first member of the Federal judiciary in the history of the Commonwealth of Virginia.

Senator **Heflin**. Senator Robb.

STATEMENT OF HON. CHARLES S. ROBB, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator **Robb**. Mr. Chairman, I am delighted to join with my senior colleague, Senator Warner, in appearing on behalf of, with the concurrence of the committee, Judge Smith today. I would have to say having learned about the procedures—and I continue to—at the Senate in terms of the order of appearance, I had the privilege of hearing the exemplary qualifications of at least two others that the panel is going to consider, and I would have to say that if this were a litter of puppies that this would be an excellent litter for the panel to consider on this particular day.

I would also observe that with degrees at the two flagship institutions in our State most identified with Mr. Jefferson that this particular nominee perhaps epitomizes the aristocracy of merit, for which Mr. Jefferson often argued, as well as any nominee that it has been my privilege to have any association with before this particular committee or others.

I have every reason to believe that she will acquit herself with distinction, and I am pleased to join my senior colleague, Senator Warner, in recommending her to you without any qualification whatsoever.

Senator **Heflin**. Thank you, gentlemen.

Our next person to be introduced is the Stuart M. Gerson, to be Assistant Attorney General for the Civil Division, Department of Justice, by Senator Heinz and Senator Specter.

Senator Heinz.

STATEMENT OF HON. JOHN HEINZ, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator HEINZ. Mr. Chairman, thank you very much. Let me say that it is a great pleasure and privilege to introduce Stuart Gerson to this panel. Since Stuart is not currently a resident of Pennsylvania, you may wonder why it is such a pleasure, and that is, for me, because I have had the opportunity to be associated with him for many years in a variety of undertakings.

He was lead counsel here in Washington for one of my hometown, Pittsburgh's, most important law firms, Reed, Smith, Shaw & McClay, and he also has the advantage of having attended Penn State University, which is going to have a better football team this year, Mr. Chairman, than many of the others represented in this room, we hope.

But more importantly, when we come before the committee to recommend a nominee—in this case, Stu Gerson has been recommended for the position of Assistant Attorney General for the Civil Division—I think there are two things the committee looks for.

The first is competence, and the second is evidence of caring. When it comes to competence, it would be hard to find somebody who is both more knowledgeable, more experienced, and has a better track record than Stu Gerson. He served with great distinction for 5 years as an assistant U.S. attorney here in the District. He tried hundreds of criminal cases, represented the Government in appellate matters before the court of appeals here in the District, and subsequent to that, both on behalf of clients at Reed, Smith, Shaw & McClay and his current firm, Epstein, Becker, has been a lead practitioner and head of litigation in a variety of extremely important, relevant, and complex areas.

I won't name them all, but among his many kinds of cases are those, both civil and criminal, representing employee benefit plan issues, ERISA, Medicare reimbursement; in other areas, tort reform, antitrust issues, employment discrimination—a very wide and commendable range of issues that are exactly what you would like the head of the Civil Division to have experience and success with.

And when I say success—and I will put all of this in the record—he has had a tremendously successful record, whether he was representing plaintiff or whether he was representing defendant, in having the court or the jury see matters his way.

He also, in terms of caring, has served this country extremely well. He served for 5 years as an intelligence officer. He has worked very closely with President Bush over the years, and most recently in the campaign as an issues adviser.

He is a man who is trusted by the President and the members of the administration, and he also has, I think, an exemplary record as a family man. And he is accompanied here today by his wife, Pam Somers, who is seated right back here and is modestly hiding.

His three kids are not here; one is at school, and the other two would probably break up the committee a little bit.

Suffice it to say, Mr. Chairman, that this is a fine man. He is a concerned and caring man. He has all the skills and experience we would ever want anyone to have doing this job. I know him both as a counselor and as a friend and I have no hesitation whatsoever in recommending him as strongly as I possibly can to the committee.

Senator HEFLIN. Thank you.

Senator Specter.

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you very much, Mr. Chairman. I am delighted to join my colleague, Senator Heinz, in introducing Stuart Gerson to this committee. I can vouch for his ability, his integrity, and his competency for the high position of Assistant Attorney General for the Civil Division.

Senator Heinz has outlined Mr. Gerson's professional and educational qualifications. What I would add is his special experience in litigation, which he has acquired by virtue of being an assistant U.S. attorney. Having had some experience as a prosecuting attorney myself, I believe that that is the very best experience to really find out what the courtroom is about and to learn litigation practices. Of all the jobs there are, Mr. Chairman, including that of a U.S. Senator, I think none is better than being an assistant prosecuting attorney.

Mr. Gerson has a very deep interest in public service. I know that because I have discussed with him at some length his interest in serving in the Department of Justice. I know of his commitment for public service. I know of the very substantial financial sacrifice that he is undertaking to come to this position. He will make, in the position of Assistant Attorney General, even less than a U.S. Senator; he will be giving up a larger salary to take this position.

I think he is an excellent selection for a very, very important job. I am delighted to speak in a committed way, which I think is appropriate under the circumstances, notwithstanding my position on this committee, to recommend him to my colleagues and to vouch for his professional competence.

Thank you, Mr. Chairman.

Senator HEFLIN. Thank you. Senator Grassley has a commitment to go other places, but he did want to ask this nominee a couple of questions.

Go ahead.

Senator GRASSLEY. I am really not going to ask questions for you to respond to, but I want to start some dialog with you on the subject of qui tam suits. My interest in this goes back to 3 years ago when representatives of the Civil Division, and then Assistant Attorney General Richard Willard, worked with this committee in putting in some long and hard hours to rewrite the Civil False Claims Act.

Among other things, we revised the qui tam section substantially. That is the section that allows private citizens knowing of fraud against the Government to assist Federal law enforcers by bringing action in courts. These False Claim Act amendments were signed into law in October 1986, and the Justice Department was an enthusiastic proponent.

Almost a year ago, certain defendants accused of filing false claims with the Government began challenging the constitutionality of the qui tam provisions. For nearly a year now, the Justice Department has failed to take a position, completely contrary to their enthusiasm for the legislation when we worked it out in 1986.

In fact, on several occasions, Justice has asked various courts considering the challenges for extensions of time to file an opinion. In each case, the Department has failed to file either a brief or an opinion.

Now, at this point, I just want to start some dialog with you on this issue and, after you have obtained your position, work with you. If I had time today, I would want to get your views on the purpose of qui tam suits, but as I said, I can't do that at this point.

During the legislative process, members of this committee—myself, as a leader—worked hand in hand as a partner with the Justice Department, and so I certainly did not appreciate hearing about a potential Justice Department challenge to the constitutionality that I read in the Washington Post.

I, individually, and this committee, collectively, have made our opinions well known to Mr. Thornburgh and to Solicitor General Starr. We believe strongly that the qui tam provisions, which are 126 years old, are constitutionally sound.

Assuming you are confirmed, you will head the department that deals most directly with qui tam suits. I would speculate that you, as head of that department, would hear both good and bad reports about how the act is working.

I feel a special responsibility for the qui tam provisions. More than anything, I would like to see them work effectively. Based on reports so far, they seem to be fulfilling their intended purpose quite well.

Should you be confirmed, I hope you and I can have a better and more direct dialog on these matters. I would like your commitment that you will work with me to keep me informed about developments with qui tam and to discuss any thoughts or positions the Department is considering regarding these amendments.

And if there is anything you want to submit for the record in further response to what I have said, that is OK, although I am not requiring that at this point. But I do want to work with you, and particularly have you keep me informed on what is going on in the administration's and the Department's consideration of the constitutionality of qui tam suits.

Mr. Gerson. Senator, I know you are on the run, but I would just say in brief response that you certainly have my commitment to work with you effectively. I have a record as an assistant U.S. attorney in fighting public and private corruption, and I guarantee you that I will continue that commitment.

I know something about the False Claims Act from my private practice, and within the role defined for me by the Attorney General, I assure you that I intend to continue in that role and will accept the offer that you make of communication and effective work.

Senator **Grassley**. Thank you, Mr. Chairman.

Senator **Heflin**. All right, thank you.

We will now call the Hon. Conrad K. Cyr to the witness stand. If you would raise your right hand, do you solemnly swear that the testimony that you give before this hearing will be the truth, the whole truth, and nothing but the truth, so help you, God?

Judge **Cyr**. I do, Mr. Chairman.

Senator **Heflin**. All right, sir. Would you like to introduce members of your family and any friends that you might have with you?

TESTIMONY OF HON. CONRAD K. CYR, BREWER, ME, TO BE U.S. CIRCUIT JUDGE FOR THE FIRST CIRCUIT COURT OF APPEALS

Judge **Cyr**. Thank you, Mr. Chairman. I am delighted to have with me here today my wife, Diana. Thank you.

Senator **Heflin**. We are delighted to have her.

On the appeal to the First Circuit Court of Appeals, your decision in *Brasslett* v. *Cota* regarding the firing of a town firechief allegedly in violation of the chief's first amendment rights was reversed. In that case, you concluded that the statements of the chief regarding the town's preparedness for a fire impaired the chief's ability to do his job.

The circuit court felt that the false statements standing alone could not reasonably cause the town manager to lose all confidence in the chief, and required that there be an independent showing of actual harm.

Given this reversal, would you give us your thoughts on the relationship between the governmental employee's duty to his employer versus the employee's first amendment rights?

Judge **Cyr**. Yes, Mr. Chairman. The principal area in which the court of appeals and I disagreed in that case was that I felt, having heard the case, that it was—that the statements made by the firechief were reckless statements, statements which did not represent the true state of affairs—for instance, the firefighting capability of the fire department—and in that regard, that his representations that the community was incapable of defending itself against fire was a misrepresentation of the facts which affected the fire department's ability to perform its work.

Senator **Heflin**. In *Bangor Baptist Church* v. *The State of Maine Department of Education*, you interpreted a statute regarding private schools in a manner that avoided constitutional review of the statute. This followed the precedent that it is the duty of the court to construe legislative enactments so as to avoid the danger of unconstitutionality.

However, in your view, does such a manner of construction raise the concern that lawmaking bodies may threaten our civil rights because lawmakers recognize that a court will find some manner of construing a law to avoid constitutional issues?

Judge **Cyr**. Well, Mr. Chairman, in that case it was my feeling, after having lived with the case for a rather long time, that what the legislature had done—and the legislative history bore this out—what the legislature had done was to provide for a system of approval of private schools, but it did not impose that as a condition of the right to operate the schools.

And what the State was attempting to do was to enjoin the operation of the school in advance of efforts at obtaining compliance with the features of the statute which the schools had previously refused to comply with. And, therefore, I merely denied injunctive relief, leaving it to the State and the schools to work out what information they needed to have provided to satisfy the State of the quality of the schools. And, ultimately, I am happy to report, Senator, they did exactly that and the private schools in the State of Maine are prospering today.

Senator **Heflin**. You were criticized in some cases by the court of appeals for failing to give a plain reading to the pertinent statute. These cases are *Small* v. *Inhabitants of the City of Belfast* and *MAIN Association of Independent Neighborhoods* v. *Commissioner*. Would you please comment on how the court of appeals reacted in overturning your decisions?

Judge **Cyr**. With respect to the latter first, Senator, the *MAIN* decision; in that case the court of appeals said that they felt that the court, I, had denied the plaintiff the right to have a case remanded to the State court after removal to the Federal court because I, in my belief, felt that remand was futile because you cannot keep the secretary, a Federal defendant, in the State court if he seeks removal.

And the Federal defendant had already announced in the proceedings before me that if the case were remanded to the State court, he would seek removal back to the Federal court. I felt that was evidence that remand would be futile, and the court of appeals said they thought that it was the right of the plaintiff to have remand, although it was highly unlikely that it could continue to press the suit in State court.

I have no fault to find with the court of appeals ruling. I merely disagreed in terms of the utility of having that remand proceeding go forward.

Senator **Heflin**. Have you given any thought to the differences between a Federal district judge and a Federal judge on the court of appeals? Specifically, how would you reflect on the necessary judicial temperament incumbent upon a judge on the Federal circuit court of appeals?

Judge **Cyr**. Well, in view of the nature of the duties of trial judges as compared with those of appellate judges, it seems to me that the instances in which one's patience might be tested, one might say, will be fewer on the court of appeals than would be the case in a trial court.

I consider civility and courtesy to be among the highest responsibilities of any presiding judge. I think that the opportunity to reflect and consider serious issues of law on the appellate court will be a luxury which very few busy Federal trial courts have. And if I am fortunate enough to be confirmed by this committee and the Senate, I very much look forward to that opportunity.

Senator **Heflin**. Thank you.

Senator Thurmond, do you have some questions?

Senator **Thurmond**. Thank you, Mr. Chairman.

Judge, we are glad to have you with us.

Judge **Cyr**. Thank you, Mr. Thurmond.

Senator THURMOND. You evidently have a fine record here. You have had a lot of experience—private practice, assistant district attorney, bankruptcy judge, and U.S. district judge.

From 1961 to 1981, I believe you served as U.S. bankruptcy judge for the district of Maine. In 1981, you became U.S. district court judge for the district of Maine. With this background, do you have any recommendations for improving the judicial system?

Judge CYR. Well, Senator Thurmond, you may recall that you and I met on two or three occasions over the years. Between 1970 and 1978, in particular, the Bankruptcy Reform Act was being considered by your committee, and I had the privilege of testifying before the Subcommittee on Judicial Improvements on many, many occasions.

Most of the improvements which I at that time and many of my colleagues were advocating have already been implemented. The bankruptcy system, thank heaven, for the good of our economy, has been vastly improved. It is a far more efficient system than we had before the Congress amended the act.

There are a few areas in which I think improvement can still be made. Among them, I think, mandatory adoption of the bankruptcy appellate panel system in each of the circuits would be a very helpful improvement in two respects; one, that you would have a three-judge specialist overview of a single bankruptcy judge's ruling before you had it go to the court of appeals.

As this committee well knows, the courts of appeals are just as busy as the trial courts, and that would, both expeditiously and inexpensively, afford a good appellate review as a layer between the bankruptcy judge and the court of appeals.

Senator THURMOND. In other words, establish a bankruptcy appeals court.

Judge CYR. Well, not a full court, Senator, because it would be bankruptcy judges who already serve as bankruptcy judges in their own districts who would serve by appointment.

Senator THURMOND. I see. You would use bankruptcy judges on this court of appeals who are already bankruptcy judges.

Judge CYR. That is correct, sir. And as you may recall, years ago that——

Senator THURMOND. How would they be selected to serve on any particular case?

Judge CYR. The circuit council used to—for instance, in the first circuit, used to appoint the three members of the bankruptcy appellate panel for each district in the circuit.

The ninth circuit is operating under the bankruptcy appellate system, but it is optional with all the circuits and it is the only one in the Nation which is. And I would simply commend to the committee's consideration the experience of the ninth circuit in that regard and it might be helpful to the committee.

Senator THURMOND. Would you mind writing me a letter and make that recommendation and give your reasons for it?

Judge CYR. I would be delighted, Senator Thurmond.

Senator THURMOND. Thank you very much.

During your tenure as U.S. district court judge, you have had to make rulings after careful consideration of the facts presented at the trial. As an appellate judge, you will be reviewing decisions of the district court judges.

What criteria do you intend to use in reviewing those decisions and trial records?

Judge CYR. Well, Senator, I will utilize whatever the review standard of that circuit happens to be. However, generally speaking, a clearly erroneous finding is required. There is no better means of acquiring a respect for trial court findings than to have a court of appeals reverse you as a trial judge because they don't like your version of the facts. I have had that on a couple of occasions. On one occasion, the Supreme Court corrected it.

I think, in other words, the trial judge is the judge who should be entitled to evaluate the credibility of witnesses, not court of appeals judges who have never seen the witnesses.

Senator THURMOND. Judge, Thomas Jefferson remarked shortly after the ratification of the Constitution that, "Our nation's particular security is the possession of a written Constitution; let us not make it a blank paper by construction." Judge Cyr, what do you think he meant by that warning, "let us not make it a blank paper by construction?"

Judge CYR. Well, Senator, it would be my——

Senator THURMOND. In other words, does the Constitution say what it means and mean what it says?

Judge CYR. I certainly think that, and I also think that it was written when it was written, and if it is going to be rewritten, it should be rewritten by the people through the amendment process, and particularly should not be rewritten by lower court Federal judges.

Obviously, the U.S. Supreme Court has the function of interpreting the Constitution, but I am not being——

Senator THURMOND. It shouldn't be rewritten by them either, should it?

Judge CYR. It should not be rewritten by them. Of necessity, under our system, they need to interpret it. But we judges are not the ones who wrote the Constitution, nor should we be.

Senator THURMOND. I think that is all I have here. I think you are well qualified and I will be very pleased to support you.

Judge CYR. Thank you, Senator Thurmond. I appreciate that.

Senator HEFLIN. Thank you, Judge Cyr. That will conclude your hearing and I hope we can move expeditiously.

Judge CYR. Thank you, Mr. Chairman. Thank you, sir, and may I simply say to the committee I appreciate Senator Specter's remarks in my behalf. He was my Yale Law School classmate, and although I was not in his scholastic category, I appreciate his kindness.

Thank you, Mr. Chairman.

Senator HEFLIN. Maybe we ought to reconsider this. [Laughter.]

[Responses to questions follow:]

United States District Court

DISTRICT OF MAINE

CHAMBERS OF
CONRAD K. CYR
CHIEF JUDGE

P.O. BOX 638
BANGOR, MAINE 04401

September 29, 1989

The Honorable Joseph R. Biden
Chairman, Senate Judiciary Committee
Room G-66, Dirksen Senate Office Bldg.
Washington, D.C. 20510-6275

Dear Mr. Chairman:

Enclosed are my written responses to the questions of Senator Gordon Humphrey regarding my nomination to the United States Court of Appeals for the First Circuit.

Sincerely yours,

Conrad K. Cyr

CKC/er
Encl.

cc: Senator Strom Thurmond

WRITTEN RESPONSES OF JUDGE
CONRAD K. CYR TO QUESTIONS
SUBMITTED BY SENATOR HUMPHREY

1. Your response to question no. 5 of Part III of the Judiciary Committee Questionnaire, on the subject of judicial activism, includes the following statement:

> There are other important guidelines to faithful constitutional interpretation, including an appreciation for the intentions of the framers of the Constitution, its historical context and evolution, but none is as important as the role envisioned by the judiciary itself in the important task of constitutional interpretation.

a. It is interesting that you place such great weight on the judiciary's perception of its own role as a primary standard or guide in constitutional interpretation. Please explain more specifically what you mean when you refer to "the role envisioned by the judiciary itself in the important task of constitutional interpretation."

As a direct consequence of the holding in Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803), establishing the federal judiciary as the final arbiter of the constitutionality of governmental action, the institutional integrity of the Legislative Branch and the Executive Branch, and the vitality of our unique system of federalism, are importantly affected by how the United States Supreme Court defines the role of the federal judiciary. It was the intent of my earlier submission to suggest that any arrogation of the functions of the elective Branches by an unelected Judiciary risks serious destabilization of our delicate constitutional system of "checks and balances" among the three coordinate Branches and among the governments of the States and the United States.

b. Some would say that the judiciary's own perception of its role in constitutional interpretation is an inflated one, and that it has resulted in the exercise of too much power by unelected judges. How do you respond to that point?

On those occasions when a federal court encroaches upon the lawmaking function of the Legislative Branch, or the proper role of the States in our federal system, by imposing the court's own policy predilections, under the guise of constitutional interpretation, the court indeed has exercised power which the Constitution vests in no court.

WRITTEN RESPONSES OF JUDGE
CONRAD K. CYR TO QUESTIONS
SUBMITTED BY SENATOR HUMPHREY

c. If you had to name a Supreme Court Justice whose views best express the judicial role you refer to, who would it be?

Among the many outstanding Supreme Court Justices, I would identify Mr. Justice John Marshall Harlan (1954-71) as an articulate advocate on the central importance of judicial restraint in safeguarding the balance of powers.

d. What is to restrain the judiciary from exercising unwarranted and excessive power if the primary standard for its constitutional role is to be set by itself?

In addition to judicial restraint, there are other important constraints traditionally associated with the judicial process, and various constitutional restraints as well, which serve as curbs upon excessive judicial power. Among the more important constraints traditionally associated with the judicial process are the doctrine of stare decisis; deferential appellate review of the factual findings of trial courts and administrative agencies; judicial deference to legislative facts; the doctrine of comity; the doctrine of abstention; and judicial recognition of the inherent limitations upon the factfinding capabilities of courts of law. Important constitutional limits upon judicial power include such Article III "case and controversy" requirements as standing, mootness and ripeness; the doctrine of "political question" jurisdiction; the express grants of power to the elective Branches, in Article I to the Executive Branch and in Article II to the Legislative Branch (the source of the rule of judicial deferral to legislative intent in statutory interpretation); the Seventh Amendment right to jury trial and its restrictions upon judicial review of jury findings; the constitutional guarantees of representative government; and the constitutional establishment of our unique system of federalism.

2. Your response to the question on judicial activism also includes an assertion that the Constitution 'places a 'creative' responsibility on our courts." Could you provide examples of situations where you feel it is appropriate for the courts to be 'creative'?

My earlier submission was not intended to suggest that courts should be creative in the sense that they should either rewrite the Constitution or write it anew. I recognize, however, that in the effort to derive constitutional meaning and understanding

WRITTEN RESPONSES OF JUDGE
CONRAD K. CYR TO QUESTIONS
SUBMITTED BY SENATOR HUMPHREY

through recourse to the historical context in which a particular constitutional provision arose, reasonable minds may differ whether a challenged action was within the contemplation of the Framers. Thus, a responsible constitutional interpretation may be perceived as "creative" by those who differ.

a. Many responsible observers feel the federal courts have been too "creative" in devising remedies which go beyond the proper judicial role. Do you share that concern?

As indicated in the responses to preceding questions, I do not suggest that the federal courts should be creative in the sense that they should devise legislative remedies which go beyond the proper role of the Judiciary, nor should the court rewrite the Constitution to suit their own policy preferences, that being the function of the constitutional amendment process, not the courts.

b. In general, do you think the federal courts have gone too far in imposing their authority over state and local governments over the past 25 years? Not far enough? Or do you think the extent of judicial activism during that period has been just about what it should be?

As a general matter, I acknowledge concern that there have been some instances in which federal courts have not exercised the requisite judicial restraint appropriate to ensuring the continued vitality of our system of federalism.

Senator HEFLIN. Our next witness is Hon. Rebecca Beach Smith, if she will come forward.

Would you raise your right hand? Do you solemnly swear that the testimony you will give before this committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. SMITH. So help me God.

Senator HEFLIN. Would you like to introduce the members of your family?

TESTIMONY OF HON. REBECCA BEACH SMITH, NORFOLK, VA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA

Ms. SMITH. I would be very pleased to, Mr. Chairman. My husband, Jack Smith, is here with me today, and my son, Luke Smith. My other son, Clark Smith, for the good of all, has been taken outside—he is 4 years old—by my brother-in-law, Don McNally. My sister, Cheryl McNally, is here, and my mother, Ms. Beach, is here, and I am proud to say that they are all Virginians.

Senator HEFLIN. We are delighted to see you here. There is a letter to be entered into the record from the Old Dominion Bar Association which supports your nomination.

Ms. SMITH. I am very pleased by their support, Mr. Chairman.

[The letter referred to follows:]

SEP 25 '89 16:45 FRANKLIN, VA 23851

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F. Blair Wimbush
Norfolk, Va
Reginald R. Yancey
Lynchburg, Va

Reply to: ____________________

September 25, 1989

The Honorable Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510-6275

Dear Senator Biden:

Thank you for your letter of September 18, 1989 soliciting the views of the Old Dominion Bar Association regarding the nomination of Rebecca B. Smith for the judgeship for the U. S. District Court in the Eastern District of Virginia. Though the Old Dominion Bar Association has a keen interest in all judgeships, those courts with jurisdiction over the protection and enhancement of the basic constitutional principles so near and dear to the minority community are of particular concern.

Your letter requesting our views provided a welcomed opportunity for representatives of the Old Dominion Bar Association and Magistrate Smith to meet and discuss issues of concern. On short notice, Magistrate Smith cooperated fully with OOBA to arrange an interview that occurred on Friday, September 22, 1989. It was a cordial and productive discussion of issues.

After a review of Magistrate Smith's background information, discussions with persons knowledgeable about her demeanor, temperament and sensitivity, and an interview with the nominee, the Old Dominion Bar Association supports the confirmation of Magistrate Smith for the District Court in the Eastern District of Virginia. Because of the added dimension that she can bring to the Federal bench, she has the potential to make an important contribution to the Federal judiciary in the Eastern District of Virginia.

Sincerely,

Alfreda Talton Harris

Alfreda Talton Harris, Esq.
President

ATH/njj

"Established in 1941"

Senator HEFLIN. I am going to yield to Senator Thurmond. He has to leave, so if he will go ahead.

Senator THURMOND. Judge Smith, I want to congratulate you. I believe you are the first lady judge from Virginia. A few years ago, I recommended the first lady to be a district judge in South Carolina.

I am very pleased that women are being recognized. I have two boys and two girls and I want to see all of them have equal opportunities. I want the girls to have just as much as the boys.

Now, I think you are well qualified and I will be glad to support you. I congratulate you on your appointment. I congratulate all these nominees on having the endorsement of both Senators, some Democrats, some Republicans.

I have another meeting I have to go to, but I just want to tell you I will be very pleased to support you.

Ms. SMITH. Thank you very much, Senator Thurmond.

Senator THURMOND. I say the same thing for these other two nominees. Mr. Garbis, you are certainly well qualified. I congratulate you on your appointment and in having both Senators to endorse you and I will be very pleased to give you my full support. And, Mr. Gerson, to be Assistant Attorney General, I think you are very well qualified and I will be very pleased to support you.

I regret that I have this meeting I have to go to, so you will please excuse me, but I will be right in there voting for you, and speaking for you, if necessary, on the floor of the Senate.

Senator HEFLIN. Thank you, Senator Thurmond.

Senator THURMOND. I have a few questions, if you would answer them for the record, about three of them for each one of you.

[The questions of Senator Thurmond and responses follow:]

WRITTEN RESPONSES OF REBECCA BEACH SMITH TO QUESTIONS OF SENATOR STROM THURMOND

1. MRS. SMITH, YOU PRESENTLY SERVE AS A UNITED STATES MAGISTRATE FOR THE EASTERN DISTRICT OF VIRGINIA. NOW THE PRESIDENT HAS NOMINATED YOU TO BE A UNITED STATES DISTRICT COURT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA. HOW DO YOU FEEL ABOUT YOUR OWN CAPACITY AT THIS POINT IN YOUR CAREER TO CARRY ON THE VERY SIGNIFICANT POWER AND RESPONSIBILITY OF BEING A FEDERAL DISTRICT COURT JUDGE?

ANSWER: I feel confident about my capacity at this point in my career to carry on the very significant power and responsibility of being a United States District Judge for the Eastern District of Virginia, because of the quality and range of my experience as a United States Magistrate in this court for over four years, my varied experience as a trial attorney in this court, and my having served as a law clerk to a District Judge in this court. As a United States Magistrate for the Eastern District of Virginia, I have had a full range of judicial duties, including conducting both jury and nonjury civil trials, hearing all forms of civil pretrial discovery motions, conducting jury and nonjury criminal misdemeanor trials, and hearing all types of pretrial criminal matters. Therefore, the quality and range of my experience in this court as a United States Magistrate, which has included most of the duties of a federal district court judge (with the jurisdictional exception of the trial of felony cases), makes me feel confident about my ability to carry on the very important job of being a federal district court judge.

2. MRS. SMITH, WOULD YOU TELL THE COMMITTEE HOW YOU WOULD HANDLE AN INCIDENT IN WHICH COUNSEL FOR ONE OF THE PARTIES IN YOUR COURT WAS OBVIOUSLY NOT A SKILLED LITIGATOR AND WAS NOT PREPARED TO ADEQUATELY REPRESENT THE INTERESTS OF HIS OR HER CLIENTS?

ANSWER: Every litigant is entitled to a full and fair trial, and it is the judge's responsibility to see that this occurs. In the criminal area, a defendant has a Sixth Amendment right to effective assistance of counsel that the trial judge must protect. As the judge dealing with an unskilled, unprepared litigator, I would first have a conference with all attorneys in the case, either at side bar or in my chambers, to point out areas of the law or the facts which were not being properly presented for the court or the jury to make a determination in the matter. I would give the attorney an opportunity to further prepare his or her case or to remedy the problems perceived by the court; and if the interests of justice required, I would take either a brief recess or grant a short continuance to allow for the preparation. In any event, a judge should be mindful that a party is entitled to the attorney of his or her choice, without court intervention in that choice. A judge's power of intervention in the attorney-client relationship is limited, and any actions in this regard must be exercised with discretion and courtesy. Moreover, the court should remember that the attorneys must present and try the case, and not the judge.

3. MRS. SMITH, THE PHRASE "JUDICIAL ACTIVISM" IS OFTEN USED TO DESCRIBE THE TENDENCY OF JUDGES TO MAKE DECISIONS ON ISSUES THAT ARE NOT PROPERLY WITHIN THE SCOPE OF THEIR AUTHORITY. WHAT DOES THE PHRASE "JUDICIAL ACTIVISM" MEAN TO YOU?

ANSWER: Our Constitution establishes three equal branches of government, with separate and distinct powers and functions. The judiciary's role is to interpret the law and the Constitution and to decide only cases and controversies brought to it by an aggrieved party. When judges reach past the immediate case and controversy before the court and impose their personal views and wills on the case, and impose broad remedies beyond the issues of the case, they become "judicial activists." It is inappropriate for a judge to reach past the specific facts and legal issues in the case actually before the court and to fashion a broad remedy that usurps the functions of the legislative or executive branches. When a judge does this, he or she becomes a judicial activist contrary to the mandates of the Constitution.

Senator HEFLIN. I don't know why it is, but for some reason or another the people that write questions use the title "magistrate." I still think maybe you magistrates ought to be referred to as "judge," but there may be some disagreement on that point.

As part of a lecture series on the formation of the Constitution, you gave a speech about post-Revolutionary War politics and the debate between the Federalists and the Anti-Federalists. You stated that the Federalists' concerns about the power of the Federal judiciary were prophetic.

Would you please share your thoughts on the development of the relationship between the Federal judiciary and the Federal legislature?

Ms. SMITH. Yes, Mr. Chairman. First, let me put that particular speech in context. It was given as part of a local lecture series for a museum, the Chrysler Museum in Norfolk, VA, and the paper presented both views, those of the Federalists and those of the Anti-Federalists.

The Anti-Federalists were opposed to the Constitution and favored the Articles of Confederation. The Federalists felt the Articles of Confederation were too loose a construction to push the United States into a solid union. The Federalists prevailed, feeling that their three equal branches of government, with a system of checks and balances, was the appropriate way to set up the union of the States and, in so setting it up, created the three branches of government. And that particular form of government still prevails today, with the separation of powers that we currently have.

Senator HEFLIN. I understand that while you were in private practice, you performed legal services for the disadvantaged for no fee or a reduced fee. Please explain the pro bono work that you did.

Ms. SMITH. In my law firm, there was no organized system or mechanism for accepting pro bono cases, but the firm encouraged attorneys to accept cases for no fee or for cost, and I made an effort to do that each year of my practice, to accept a number of cases.

I believe I listed at least six significant cases on my questionnaire which involved a few hundred legal hours. One of those cases involved taking care of an estate for a disadvantaged minority family, and the estate would have been dissipated had the legal fees been charged in that case.

Two of the other cases involved matters for handicapped individuals. One case involved a child custody dispute for an indigent mother, and the cases are enumerated there. They were significant cases. They were not cases that involved one court appearance.

In addition, I believe it is an attorney's and a judge's role not only in the profession but as an individual in the community to try to work for the disadvantaged and to help the disadvantaged, and I have endeavored to do that through work in our local soup kitchen and through some community volunteer work that I believe is set forth on the questionnaire.

I was also very active in my bar association at the Law Day programs and going around to the various high schools to promote interest of students in equal justice under the law so that they understand our judicial system and its importance to them as they mature and as they take their roles in society.

Senator **Heflin**. You have served as a magistrate for some 4 years. Senator Thurmond asked the last nominee about various improvements that might take place in the bankruptcy court. I might ask you to give some thought and drop us a letter about this issue, but you can give us your immediate reaction orally. What do you think should be done to make better and effective use of magistrates in our trial courts?

Ms. **Smith**. In the eastern district of Virginia, I have been very fortunate to serve as a U.S. magistrate because in our district the judges fully utilize U.S. magistrates.

I have had a full range of responsibilities in the civil area, in the civil trial area, in the pretrial matters, discovery, both dispositive and nondispositive motions and matters, and also in the criminal area.

The only area that our jurisdiction has not utilized magistrates has been in the actual trial of felony cases, and that, of course, is prohibited by statute. A U.S. magistrate does not have that jurisdiction.

Because of the use of magistrates in the eastern district of Virginia, I feel we move our dockets very quickly. We are known for having what some have termed the rocket docket. I don't know that it is quite that fast, but that is a terminology that has been used to describe our dockets.

And I believe that one of the reasons is the use of the U,S. magistrate. It allows the district judges time for some of the more lengthy cases. It allows the U.S. district judges time to focus on the docketing system and to keep the docket moving.

And I do feel that there should be full utilization of U.S. magistrates in the Federal judicial center—excuse me—in the Federal judicial system, and I would be happy to present my views further to you in writing on it.

[The information of Ms. Smith follows:]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
WALTER E. HOFFMAN U.S. COURTHOUSE
600 GRANBY STREET, ROOM 181
NORFOLK, VIRGINIA 23510

CHAMBERS OF
REBECCA BEACH SMITH
UNITED STATES MAGISTRATE

(804) 441-6655
FTS 827-6655

September 29, 1989

The Honorable Howell Heflin
United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Dear Senator Heflin:

During my confirmation hearing on Tuesday, September 26, 1989, for the position of United States District Judge for the Eastern District of Virginia, you requested that I submit my thoughts in writing to you on the utilization of United States Magistrates in the federal judicial system.

My experience over the past four years as a United States Magistrate has been in the Eastern District of Virginia, Norfolk Division. In this district and division, United States Magistrates are utilized to the maximum extent under the law. We have a full range of judicial responsibilities, including trial of civil cases, both jury and nonjury, regardless of the subject matter or the amount in controversy; trial of all misdemeanor criminal cases, both jury and nonjury; hearing all forms of civil pretrial motions, namely discovery motions, procedural motions, motions for summary judgment, and motions to dismiss; handling preliminary matters in felony criminal cases, such as arraignments, bail review, appointment of counsel, and presiding over grand juries; conducting pretrial and settlement conferences in civil cases; and reviewing prisoner litigation and conducting evidentiary hearings in prisoner cases (habeas corpus and 42 U.S.C. § 1983 cases).

This full utilization of the two Magistrates in Norfolk provides necessary relief to the District Judges so that the overall docket of our court moves very quickly. Trial dates in civil cases are set no later than six months from the date of the initial pretrial conference, which occurs within a couple of weeks of the answer being filed. Continuances of trial dates in civil cases are not granted, except in very rare circumstances. Criminal cases are set and tried within the seventy-day time limit of the Speedy Trial Act, with few exceptions. The District Judges, through full utilization of the Magistrates, are able to maintain a fast-paced docket so that parties have their cases and motions heard in a timely manner, even when the District Judges become involved in lengthy trials of other cases.

The key to success of full utilization of Magistrates lies with the District Judges and the litigants, particularly in the areas of trial of civil cases and referral of dispositive civil motions. Other than issuance of criminal process and trial of misdemeanor cases, Magistrates' ability to hear other matters depends upon the referral of those matters by the District Judges and, additionally for the trial of civil cases, depends upon the consent of the parties. In our court, the District Judges have been willing and eager to assign all types of matters to the United States Magistrates, and the local attorneys and litigants have been forthcoming in consenting to the Magistrates' jurisdiction to the extent that the Magistrates here have not been able to handle all of the cases for which consents have been given. It is my understanding that this level of referral and consent from the bench and the bar is not necessarily uniform throughout our federal judicial system. However, each district, by necessity, must determine the most effective way to handle its docket.

In order to fully utilize United States Magistrates, it is necessary to gain the confidence and support of both the local bench and bar. I have found that many attorneys and members of the public simply do not understand what United States Magistrates may do and what their role is in the federal judicial system. Educating the bar and the public in this area is important to increase their confidence in utilizing United States Magistrates. Further, many United States Magistrates feel that their title is an impediment to increased confidence in their utilization, because United States Magistrates are often confused with state magistrates. The National Council of United States Magistrates is supporting a title change to include the word "judge" in the title, thereby enhancing the image of and confidence in United States Magistrates by the bench, the bar, and the public.

Congress recently has done much to increase the status of United States Magistrates by improving our retirement benefits and salary. These improvements are greatly appreciated and recognized by United States Magistrates. Thank you for your consideration of my views.

Very truly yours,

Rebecca Beach Smith

Rebecca Beach Smith

RBS/mw

CC: The Honorable Strom Thurmond✓

Senator **Heflin**. Thank you. We appreciate your presence here and your testimony, and I would assume that your nomination will move with deliberate speed. I think you will have no problem and we will have your nomination shortly confirmed.

Ms. **Smith**. Thank you, Mr. Chairman.

Senator **Heflin**. Thank you.

Our next nominee is Marvin J. Garbis, to be U.S. District Court Judge for the District of Maryland, who has been nominated for that position.

Will you raise your right hand? Do you solemnly swear that the testimony that you will give before this hearing will be the truth, the whole truth, and nothing but the truth, so help you god?

Mr. **Garbis**. I do.

Senator **Heflin**. Would you like to introduce members of your family?

TESTIMONY OF MARVIN J. GARBIS, BALTIMORE, MD, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND

Mr. **Garbis**. Yes, sir. My mother-in-law, Ms. Zaroff; my cousin, Paul, and my Aunt Hattie, and my niece, Karen, are here—oh, and my sister, Julie.

Senator **Heflin**. Don't omit any of them; you will be in the doghouse.

We have a letter from Congressman Cardin in support of your nomination which we will insert in the record at this time.

[The letter referred to follows:]

BENJAMIN L. CARDIN
3D DISTRICT, MARYLAND

COMMITTEE ON PUBLIC WORKS
AND TRANSPORTATION

COMMITTEE ON THE JUDICIARY

ASSISTANT MAJORITY WHIP

Congress of the United States
House of Representatives
Washington, DC 20515

REPLY TO
☐ 507 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4016

☐ 540 E. BELVEDERE AVENUE, SUITE 201
BALTIMORE, MD 21212
(301) 433-8886

☐ 754 FREDERICK ROAD
CATONSVILLE, MD 21228
(301) 788-2041

☐ 412 S. HIGHLAND AVENUE
BALTIMORE, MD 21224
(301) 563-9177

September 26, 1989

Chairman Joseph Biden
Attn: Kyle Knapp
Senate Judiciary Committee
224 Senate Dirksen Office Bldg.
Washington, D.C. 20510

Dear Mr. Chairman:

Marvin J. Garbis was nominated by President Bush to the United States District Court of Maryland. I have known Marvin for many years, as he resides in the Third Congressional District of Maryland. I urge my colleagues in the Senate to confirm Marvin J. Garbis to the bench.

I have known Marvin J. Garbis to be an intelligent and thoughtful lawyer whose abilities will be of exceptional service to the citizens of Maryland. His involvement and familiarity with the Baltimore legal community will be a valuable asset to the bench. I have the utmost confidence in his ability to be an effective and fairminded judge.

I urge the Senate to swiftly fill the vacancy on our federal bench by confirming Marvin J. Garbis.

Sincerely,

Ben Cardin

Benjamin L. Cardin
Member of Congress

BLC:sl

Senator HEFLIN. In response to the committee's questionnaire, you described your background as including Federal litigation, primarily tax, civil and criminal, white collar, and related matters, throughout the United States.

Would you describe to us in more detail and with more specificity the non-tax-related cases that you have litigated?

Mr. GARBIS. Well, let me reflect. Obviously, I have done a great deal in the tax field. However, I have been involved in, just as a sampling, sir, a classic contract action between two private parties that was tried in State court in Baltimore County involving restrictive covenants.

Some of the nontax cases, I think, are listed in the 10 cases that are detailed in the questionnaire—a Federal Travel Act case which was at that time a relatively important issue of the scope of the Travel Act in terms of its effect on interstate commerce.

I was involved in the rocket docket that Magistrate Smith presented to you in the GTE Government contract fraud case, which was a rather lengthy proceeding. In short, while I have emphasized the tax practice, and a lot of that has been the criminal side, I have been involved in other white collar criminal work.

In some of the very large cases—the one that is called the Project Haven investigation in the questionnaire, which was a criminal tax investigation of a Chicago law firm; an important part of the proceeding was a legal malpractice action brought against the law firm in which I was one of the counsel for the law firm involved in the whole range of civil discovery.

Senator HEFLIN. Based on your experience in complex litigation, I would like to hear your thoughts on how Federal judges have managed complex litigation. These cases present not only legal problems, but management problems as well, ranging from finding a courthouse and a courtroom big enough to hold all the lawyers, to resolving discovery disputes in numerous jurisdictions.

What are the key elements for success in managing complex litigation, and how will you handle these cases as a judge?

Mr. GARBIS. My observation, Senator, has been based on my cases. In the larger and more complex cases, the court and the parties have been blessed with the fact that the Government was one of the litigants. And, generally speaking, the Government is a responsible litigant, which is an aid to the court because a court has got a great deal of problems when you don't have responsible litigants.

In my judgment, Senator, I think it will be necessary to help the parties and help them control the case, to have frequent conferences in a complex case to narrow the issues, not to interfere with the lawyers, but to be available to help curb discovery abuses and, in a sense, to manage the case.

I intend to model myself after Chief Judge Harvey of our district, who I believe has not only the reputation, but the actuality of being the best case manager that I have ever known. And I intend to go to school with Judge Harvey if I am fortunate enough to be confirmed.

Senator HEFLIN. Mr. Garbis, in the background checks that were made concerning you, there were some complaints by some lawyers that you were a tenacious adversary, but that sometimes you lacked diplomacy.

Given these criticisms, have you reflected upon the proper courtroom temperament that is expected of a Federal judge?

Mr. GARBIS. I certainly have, sir, and I think that tenacity at times can possibly be a benefit rather than a detriment. But I do think the most important thing a judge can bring to the bench and to the courtroom is courtesy, patience, and affording dignity to the parties.

I would intend, if I am confirmed, to have a sign on my bench that I can see and no one else that tells me that I am trying the most important case in the world to these folks in front of me every time.

The best judges that I have been before have treated each case as if it is that important. The parties deserve your patience, your attention, and your kindness. There is no excuse for discourtesy from anyone, least of all from a Federal judge.

Senator HEFLIN. I hope that you will voice that to some of the present sitting judges at some judicial conferences that you might be gathered at in the future.

We thank you. We appreciate your answers. We expect that your nomination will move rapidly, too.

Mr. GARBIS. Thank you, sir.

[Responses to questions follow:]

JOHNSON & GIBBS
A Professional Corporation
ATTORNEYS AND COUNSELORS
1001 Pennsylvania Avenue, NW
Suite 745
Washington, DC 20004
202/682-4500

Fax 202/682-4674

Writer's Direct Dial Number
(202) 682-4510

Other Locations
Austin, Texas
Dallas, Texas
Houston, Texas

September 28, 1989

VIA HAND-DELIVERY

Senator Joseph R. Biden
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C.

RE: District of Maryland

Dear Mr. Chairman:

I enclose answers to the written questions posed to me by Senator Thurmond.

If I can be of further assistance to the Committee in its consideration of my nomination, please feel free to call on me.

Sincerely yours,

Marvin J. Garbis

Marvin J. Garbis

MJG/ms
Enclosures

cc: Senator Strom Thurmond

ANSWERS OF MARVIN J. GARBIS TO WRITTEN QUESTIONS FROM SENATOR THURMOND

QUESTION 1

Mr. Garbis, you have been a practicing attorney for over twenty-five years, now you have been nominated to be a federal district judge for the District of Maryland. Do you foresee any difficulty in the transition from advocate to impartial jurist?

ANSWER 1

I realize that it is necessary for a judge to approach cases on a fair and even-handed basis, carefully considering both sides to all questions. An advocate, while trying to anticipate the adversary's contentions, will tend to see a case from the perspective of his or her client. Therefore, I certainly am aware that I will have to make a transition in approach and recognize that this will take an effort on my part. However, I believe that I can accomplish the transition without undue difficulty.

QUESTION 2

Mr. Garbis, I consider judicial temperament to be a prerequisite for a federal judge. Would you give your thoughts on this subject?

ANSWER 2

I agree that a sound judicial temperament is essential for a federal district judge. I believe that a judge must treat all parties, witnesses, and attorneys with the utmost of courtesy. The judge must have, and must show, an interest in every proceeding before him or her. Every case is extremely important to the parties and must be treated as important by the judge as well.

QUESTION 3

Mr. Garbis, are there any circumstances where you would consider it appropriate to decide a case on some basis other than the one where the intent of the framers of legislation or constitutional provisions can be detected, either through the text of a provision or its surrounding legislative history?

ANSWER 3

No, there are none.

Senator Heflin. Mr. Gerson, if you will come forward, will you raise your right hand? Do you solemnly swear that the testimony that you will give before this hearing will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. Gerson. I do.

Senator Heflin. Would you like to introduce members of your family?

TESTIMONY OF STUART M. GERSON, CHEVY CHASE, MD, TO BE ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. Gerson. The only member of my family who is here today is my wife, Pamela Somers, who is my companion here as she is in all things. I also am grateful to her for being the mother of our three very small children, who, by that virtue, are not here today.

And if I might also give thanks to God for the memory of parents, whom I wish were alive to be here today; my father, especially. It wasn't until about the time I was in law school that he came to the conclusion that maybe he hadn't wasted his time and money on me and that maybe I was moving along the right track. And it pleases me to know that if he were here, he would be very pleased that his somewhat contentious son has perhaps come to some good.

Senator Heflin. All right, sir. Well, we are delighted to see you.

You have authored a September 1986 National Law Journal article discussing the Justice Department's memorandum on AIDS. Would you describe that article, and do you agree with the Department's position as outlined in the memo?

Mr. Gerson. Well, I did at the time. I think in view of the Supreme Court's decision in the case of *Arline* v. *County of Nassau* that one can say nothing other than the fact that both the Justice Department and I were wrong at the time.

I think both of us were taking a strict constructionist view of what the Congress meant when it passed the Rehabilitation Act as to whether it should cover communicable diseases.

The Supreme Court said in the specific context of tuberculosis that it does. So I would say that both my view and that of the Justice Department have, out of necessity, been modified over time.

Senator Heflin. You indicated in your responses to the committee's questionnaire that you had also counseled persons who were suffering from AIDS as to their legal rights. What are those rights, as you understand them?

Mr. Gerson. Well, as I understand it, and as I have counseled people who have been referred to me by individuals and church groups, they have the full panoply of rights that any citizen has.

And what I have been particularly concerned with in speaking with such individuals is that they not be denied any contractual or other right that they have to employment, and that they be treated fairly and with dignity by their employers, especially in view of the particular misfortune that they face with an essentially fatal illness.

Senator Heflin. In your previous speeches, you have outlined your belief regarding the importance of federalism in health care issues. Would you please provide us a brief overview of your views on that issue?

Mr. GERSON. Well, let me speak to the issue of federalism in health care in two regards, Senator. First, I believe, to harken back to what Justice Brandeis suggested, that we have no approach toward the provision of services that is absolutely correct. And so, where possible, it is highly desirous and highly desirable to allow States and regions to experiment with varying approaches toward the delivery of necessary health services.

I don't feel that unless the—to speak to the second point, that unless the Congress is very specific in its legislation that courts or others should attempt to create Federal preemption of areas that have been traditionally regulated by the States.

Those are two areas in which I think there are important federalism issues that relate to the provision of health care.

Senator HEFLIN. How do you view the role of an Assistant Attorney General within the Department of Justice? Do you have any specific goals currently in mind for the Civil Division, or have you any thoughts about the future direction of the Division? If so, would you share those views?

Mr. GERSON. Yes, sir. First off, when you talk about the role of the Justice Department in general or the Civil Division in particular, it is fairly and vigorously to represent the interests of what I believe is the most fortunate and most important client in the world, the people of the United States of America, whose interests are directly involved in the case and who are paying the freight of the activities of the Department through their tax revenues. I start there.

If I am confirmed to do this job, in a sense, it won't be any different from any other job that I have. It is representing a client, and representing it fairly and with vigor, and this is the most important client I can think of.

With specific reference to the Civil Division, I echo the thoughts of others who have occupied that position and who have testified before this committee that the most important thing that the Assistant Attorney General in charge of the Division can bring is a sense of scope and management of ever-increasingly complex litigation.

And I say that not only in terms of the ascertainment of the meritorious from the unmeritorious cases and the separation of the wheat from the chaff, but also in attempting to innovate ways to deal with systemic and repetitive litigation through alternative disputes resolution, through effective group management of cases, in order to give the people of the United States effective service in an economical and efficient way.

Senator HEFLIN. Well, thank you, sir. I appreciate your answers. I would expect you will move forward, too, very rapidly in the confirmation process.

[Responses to questions follow:]

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 29, 1989

The Honorable Joseph R. Biden
Chairman
Senate Judiciary Committee
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Enclosed are the responses of Stuart Gerson to the written questions of Senator Thurmond in connection with his nomination as Assistant Attorney General for the Civil Division.

If we can be of any further assistance please let us know.

Sincerely,

Carol T. Crawford

Carol T. Crawford
Assistant Attorney General

Enclosure

cc: The Honorable Strom Thurmond
Ranking Minority Member

RESPONSES TO THE HONORABLE STROM THURMOND'S QUESTIONS FOR STUART GERSON, OF MARYLAND, TO BE AN ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, DEPARTMENT OF JUSTICE

1. MR. GERSON, THE CIVIL DIVISION LITIGATES ON BEHALF OF THE UNITED STATES, ITS DEPARTMENTS AND AGENCIES, MEMBERS OF CONGRESS, CABINET OFFICERS, AND OTHER FEDERAL EMPLOYEES ACTING IN THEIR OFFICIAL CAPACITY. WITH SUCH A BROAD AREA OF RESPONSIBILITY DO YOU HAVE ANY RECOMMENDATIONS TO HELP ALLEVIATE THE TREMENDOUS CASELOAD THAT UNDOUBTEDLY CONFRONTS THE DIVISION?

Response: The caseload that confronts the Civil Division is indeed a daunting one. Among the ways that this burden might be alleviated is the imposition of systematic management -- not just the review of the merits of single cases, but the gathering together of like, repetitive matters and the implementation of group solutions. Federal tort reform is another area in which the Executive and Legislative branches can and should work together in order to help achieve justice for litigants with greater speed and at lesser cost. While most tort litigation is state based, some remedial action could take place in the appropriate federal sphere.

2. MR. GERSON, IF CONFIRMED AS ASSISTANT ATTORNEY GENERAL FOR THE CIVIL DIVISION, WHAT WILL BE YOUR OBJECTIVES FOR THE DIVISION IN THE FUTURE?

Response: If confirmed, my foremost objective will be the provision of sound, efficient and fair management of the Division's case load, consistent with my comments above. I also want to work effectively in satisfying the Division's expanding responsibilities mandated in the immigration and food and drug areas, as well as to contribute, as mandated by the Attorney General, towards the President's initiatives against illegal drug activities.

3. MR. GERSON, THERE IS FREQUENTLY THE ARGUMENT THAT OUR SOCIETY IS TOO LITIGIOUS AND THAT ONE WAY TO EASE THE BACKLOG OF CASES IS TO KEEP "FRIVOLOUS" CLAIMS OUT OF COURTS. DO YOU HAVE ANY THOUGHTS ON MINIMIZING THE EXTENT TO WHICH A COURT DEVOTES TIME TO HEARING A FRIVOLOUS CASE?

Response: In amending the Federal Rules of Civil Procedure through the strengthening of Rule 11, the Congress has given the federal courts an effective tool in policing against frivolous actions. I favor the strong judicial enforcement of the rule and significant court supervision to prevent discovery abuse. Additionally, in line with recent Supreme Court decisions under Federal Rule of Civil Procedure 56, I support more aggressive, early resolution of cases through summary judgment where there are no material facts in dispute and legal issues should be dispositive.

4. MR. GERSON, THERE HAVE BEEN SUGGESTIONS THAT ALTERNATIVE DISPUTE RESOLUTION MECHANISMS MIGHT BE FURTHER UTILIZED. DO YOU FEEL THIS IS A WORKABLE SOLUTION, AND IF SO, WHY?

Response: From the time, several years ago, when I began my participation in the joint Harvard University/American Bar Association project on dispute resolution, I have come to favor the judicious interposition of arbitration, mediation and mini-trial techniques as alternatives to expensive and time consuming traditional litigation. In appropriate cases, these methods can offer workable solutions to problems that are often superior to traditional litigation because they allow for greater participation by parties in the formulation of the outcomes of their cases, and these outcomes can be achieved more quickly and less expensively than through formal, traditional means. Particularly where parties are likely to deal with each other in the future, ADR techniques can be most useful.

Senator HEFLIN. Is there anything else to come before us?

[No response.]

Senator HEFLIN. If not, we will adjourn the hearing. Thank you very much.

[Whereupon, at 3:32 p.m., the committee was adjourned.]

CONRAD K. CYR

Birth:	December 9, 1931	Limestone, Maine
Legal Residence:	Maine	
Marital Status:	Married	Diana Kathleen Sanborn Cyr 2 children
Education:	1949 - 1953	Holy Cross College B.S. degree, *cum laude*
	1953 - 1956	Yale Law School J.D. degree
Bar:	1956	Maine
Experience:	1956 - 1959	Private practice Limestone, Maine
	1959 - 1961	Assistant U. S. Attorney District of Maine
	1961 - 1962	Winchell & Cyr Bangor, Maine
	1961 - 1981	U.S. Bankruptcy Judge District of Maine
	(1980-1981)	Chief Judge, Bankruptcy Appellate Panel
	1974 - 1976	Standing Special Master U.S. District Court District of Maine
	1981 - present	U.S. District Judge District of Maine (Chief Judge 1983-pres)
Office:	202 Harlow Street Bangor, Maine 04401 207 945-0576	
Home:	Brewer, Maine 04412	

To be United States Circuit Judge for the First Circuit

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Conrad Keefe Cyr (none)

2. Address: List current place of residence and office address(es).

Residence:

Brewer, ME 04412

Office:
U. S. Courthouse
202 Harlow Street, Rm. 350
P. O. Box 635
Bangor, ME 04401

3. Date and place of birth.

December 9, 1931 - Limestone, ME.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Diana Kathleen (Sanborn) Cyr; homemaker.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Holy Cross College
(9/49 - 6/53;
Bachelor of Science)

Yale Law School
(9/53 - 5/56; Juris
Doctor)

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

9/56 - 1/59	Law Offices of Conrad K. Cyr Main Street Limestone, ME 04750	(Self-employed Lawyer)
1/59 - 4/61	Office of the United States Attorney	(Assistant U. S. Attorney)

	for the District of ME 202 Harlow Street Bangor, ME 04401	
4/61 - 12/62	Winchell & Cyr Franklin Street Bangor, ME 04401	(Partnership; Law Practice)
7/61 - 10/81	U. S. Bankruptcy Court for the District of ME 202 Harlow Street Bangor, ME 04401	(U. S. Bankruptcy Judge)
10/81 - to date	U. S. District Court for the District of ME 202 Harlow Street Bangor, ME 04401	(U. S. District Judge)
1982 to date	Bangor Historical Associates c/o John Powell Skyline Drive Holden, ME 04112	(Limited Partner)

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

   No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

   None.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

   Member, Aroostook County Bar Association; Penobscot County Bar Association; Maine Bar Association; American Judicature Society; American Bar Association; National Bankruptcy Conference; National Conference of Bankruptcy Judges; National Conference of Former Bankruptcy Judges.

   Former Advisor, Maine Bar Section on Bankruptcy and Reorganization; Former Chairman, Chapter 13 Committee, National Bankruptcy Conference; Former Chairman, Legislative Policy Committee, National Conference of Bankruptcy Judges; Former Secretary, Vice-President, President, National Conference of Bankruptcy Judges; Member, First Circuit Judicial Council (1987 to date); Member, U. S. Judicial Conference Committee on the Administration of the Bankruptcy System (1987 to date).

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies.

None.

Please list all other organizations to which you belong.

Bangor Historical Society; Yale Alumni of Maine; Holy Cross Club.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed.

Courts of State of Maine (1956)
U. S. District Court for the District of Maine (1959)
U. S. Court of Appeals for the First Circuit (1960)

Please explain the reason for any lapse of membership.

Not applicable.

Give the same information for administrative bodies which require special admission to practice.

Not applicable.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Legal Treatise:

5 *Collier on Bankruptcy*, Adjustment of Debts of Individuals with Regular Income (Matthew Bender 15th ed. 1979).

Legislative Testimony:

Cyr, *Hearings on S.J. Res. 100 Before the Subcommittee on Bankruptcy of the Senate Committee on the Judiciary*, 90th Cong., 2d Sess., at 48-52 (1968);

Cyr, *Hearings on H.R. 31 & H.R. 32 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 94th Cong., 1st Sess., at 198 (1975);

Cyr, *Setting the Record Straight For A Comprehensive Revision of the Bankruptcy Act of 1898*, *Hearings on H.R. 31 & H.R. 32 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 94th Cong., 1st Sess., at 225 (1975);

Cyr, *Hearings on S. 235 & S. 236 and S. 582 & S. 2597 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 94th Cong., 1st Sess., (Part III), at 139 (1975);

Cyr, *Hearings on H.R. 31 & H.R. 32 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 94th Cong., 2d Sess., at 1315-1332 (1976);

Cyr, *Hearings on S. 235 and S. 236 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 94th Cong., 2d Sess., at 920 (1976);

Cyr, *Hearings on H.R. 8200 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 95th Cong., 1st Sess., at 161-186, 256 (1977).

Law Review Articles:

Cyr, *The 'Compassionate' Discharge, Or Is It The 'Perilous' Discharge of §661*, 22 Pers. Fin. L.Q. 96 (1968).

Cyr, *Post Hearing Procedures*, Proceedings of Fifth Seminar for Referees in Bankruptcy, 257 (Clark-Boardman 1968);

Cyr, *The House That Jack Built*, Proceedings of Fifth Seminar for Referees in Bankruptcy, 297 (Clark-Boardman 1968);

Cyr, *Bankruptcy Courts in Transition Toward Debtor Rehabilitation*, 22 Me. L. Rev. 333 (1970);

Cyr, *Chapter XIII and The Commission on the Bankruptcy Laws of the United States: A Time of Reckoning*, 75 Com. L.J. 385 (1970);

Cyr, *A Janus View - "The New Bankruptcy Rules - Circa 1970*." 44 Ref.J. (1970);

Cyr, *The Referees' Salary & Expense System: "Blessed Be The Fee That Binds,"* 24 Pers. Fin. L.Q. 117 (1970);

Cyr, *Single Claim Jurisdiction for the United States Court of Consumer Affairs: An Interim Proposal for Relevant Regulation of Consumer Credit*, 46 Am. Bankr. L.J. 199 (1972);

Cyr, *The Abandonment of Judicial Administration of Insolvency Proceedings: A Commitment to Consumer Disservice*, 78 Com. L.J. 40 (1973);

Cyr, *The Bankruptcy Act of 1973: Back to the Drafting Board*, 48 Am. Bankr. L.J. 45 (1974);

Cyr, *Setting the Record Straight for a Comprehensive Revision of the Bankruptcy Act of 1898*; 49 Am. Bankr. L.J. 99 (1975);

Cyr, *Chapter XIII Bench Guide for the Bankruptcy Court* (Adm. Off. U.S. Courts);

Cyr, *Chapter XIII: A Perspective*, Bankruptcy Practice and Procedure, 505 (P.L.I. 1977).

Cyr, *Commencement of a Bankruptcy Case: The Mechanics*, 85 P.L.I. News, Vol. 14 (Oct. 24, 1977);

Cyr, *Bankruptcy Act Chapter XIII: A Perspective*, 90 P.L.I. News, Vol. 14 (Nov. 11, 1977);

Cyr, *Structuring A New Bankruptcy Act: A Comparative Analysis*, 52 Am. Bankr. L.J. 141 (1978);

Cyr, *The Right to Trial by Jury in Bankruptcy: Which Judge Is to Preside*, 63 Am. Bankr. L.J. 53 (1988).

13. *Health*: What is the present state of your health?

Excellent.

List the date of your last physical examination.

July 10, 1989

14. *Judicial Office*: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

United States Foreign Intelligence Surveillance Court (May 18, 1987 to date). Appointed as one of seven judges of the United States Foreign Intelligence Surveillance Court, which was established by the Foreign Intelligence Surveillance Act of 1978. The jurisdiction of the FISA court is set forth in 50 U.S.C.A. §1801, *et seq*. (Supp. 1988).

Chief Judge, United States District Court, District of Maine (October 2, 1981 to date). Appointed U. S. District Judge for the District of Maine; Chief Judge, June 1, 1983 to date.

Chief Judge, Bankruptcy Appellate Panel, *District of Massachusetts*. (March 1, 1980 to October 2, 1981). Appointed chief judge of three-judge appellate panel, authorized by Public Law 95-598. Exclusive appellate jurisdiction of all appeals from judgments and orders of the United States bankruptcy judges for the District of Massachusetts.

Standing Special Master, United States District Court, District of Maine (July 1974 to April 1976). Prior to the authorization of a second district judgeship in Maine, I was appointed as standing special master, responsible for hearing and ruling on pretrial motions, and for conducting pretrial conferences, in civil cases pending in the United States District Court, District of Maine, at Bangor.

United States Bankruptcy Judge, *District of Maine* (July 1, 1961 to October 2, 1981). Appointed; concurrent districtwide jurisdiction in bankruptcy and reorganization proceedings, with primary responsibility for proceedings filed in 11 of 16 Maine counties, comprising 85% of the State of Maine.

15. *Citations*: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) ten most significant opinions published:

1. *In re Medomak Canning Co.*, 25 UCC Rep. 437; 3 Bankr. Ct. Dec. 1131 (Bankr. D. Me. 1977), *aff'd*, (D. Me. Apr. 21, 1978); *aff'd per curiam*, slip op. No. 78-1245 (1st Cir. Nov. 21, 1978) (unreported opinion). *See also* Comment, 3 Me. Bar J. 206 (1988) [attached as Exhibit A]. *See also In re Samoset Associates*, 24 UCC Rep. 510 (Bankr. D. Me. 1978).

2. In re Sullivan Ford Sales, 2 B.R. 350; 1 C.B.C.2d 400; 5 Bankr. Ct. Dec. 1288 (Bankr. D. Me. 1980).

3. Scheck v. Baileyville School Committee, 530 F. Supp. 679; 2 Ed. Law Rep. 770 (D. Me. 1982).

4. Jones v. North American Aerodynamics, Inc., 594 F. Supp. 657; 53 U.S.L.W. 2211 (D. Me. 1984), aff'd, 767 F.2d 905 (1st Cir. 1985).

5. United States v. Taylor, 585 F. Supp. 393 (D. Me. 1984), rev'd, 752 F.2d 757 (1st Cir. 1985), rev'd, 477 U.S. 131 (1986).

6. In re Stevens, 68 B.R. 774; 25 ERC 1534; 55 U.S.L.W. 2373; 10 C.B.C.2d 253; 15 Bankr. Ct. Dec. 556; Bankr. L. Rep. ¶71,588; 17 Env't L. Rep. 20,481 (D. Me. 1987).

7. United States v. Bassford, 601 F. Supp. 1324 (D. Me. 1985), aff'd, 812 F.2d 16 (1st Cir. 1986), cert. denied, 107 S.Ct. 1909 (1987).

8. Tauvar v. Bar Harbor Congregation of Jehovah's Witnesses, Inc., 633 F. Supp. 741 (D. Me. 1985), aff'd, 787 F.2d 579 (1986), cert. denied, 479 U.S. 1038 (1987).

9. United States v. Gray, 635 F. Supp. 572; 54 U.S.L.W. 2599 (D. Me. 1986), aff'd, 814 F.2d 49 (1st Cir. 1987).

10. Coles Exp. v. New England Teamsters & Trucking Industry Pension Fund, 702 F. Supp. 355; 57 U.S.L.W. 2452 (D. Me. 1988).

(2) decisions reversed or affirmed with significant criticism of substantive or procedural rulings[1]:

a. Sierra Club v. Marsh, 701 F. Supp. 886 (D. Me. 1988), vacated in part, 872 F.2d 497 (1st Cir. 1989).

Sierra Club v. Marsh, 701 F. Supp. 886 (1988), held that Amoco Production Co. v. Village of Gambell, 480 U.S. 531 (1987), had overruled or substantially modified the ruling of the United States Court of Appeals for the First Circuit in Commonwealth of Massachusetts v. Watt, 716 F.2d 946 (1st Cir. 1983), which had held that any administrative decision made pursuant to the National Environmental Policy Act (NEPA), without the benefit of the information contemplated by NEPA, results in harm without regard to whether there is evidence of environmental harm. In *Sierra Club v. Marsh*, 872 F.2d 497 (1st Cir. 1989), the First Circuit vacated that portion of the ruling in *Sierra Club v. Marsh*, 701 F. Supp. 886 (D. Me. 1988), and remanded for further proceedings.

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[1]/The only significant appellate criticism occurring in any appellate opinion affirming one of my rulings appears in United States v. Dillon, 701 F.2d 6 (1st Cir. 1983), aff'g United States v. Whitemore,

b. *MAIN v. Commissioner, Maine Dept. of Human Services, et al.*, 697 F. Supp. 557 (D. Me. 1988), *vacated in part*, ___ F.2d ___ slip op. No. 88-2145 (1st Cir. June 6, 1989).

MAIN v. Commissioner, Maine Dept. of Human Services, et al., 697 F. Supp. 557 (D. Me. 1988), dismissed an action removed from state to federal court by the state defendant following a determination that the plaintiff lacked standing to sue in federal court; the court did so on the ground that remand would be futile. *MAIN v. Commissioner, Maine Dept. of Human Services, et al.*, ___ F.2d ___, slip op. No. 88-2145 (1st Cir. June 6, 1989) (copy attached as Exhibit B), vacated the order dismissing the action, on the ground that "[i]t is conceivable, though unlikely, that MAIN will succeed in finding a state forum for its claims," slip op. at 8.

c. *Small v. Inhabitants of City of Belfast*, 617 F. Supp. 1567 (D. Me. 1985), *rev'd*, 796 F.2d 544 (1st Cir. 1986).

Small v. Inhabitants of City of Belfast, 617 F. Supp. 1567 (D. Me. 1985), held that Maine's two-year statute of limitations, applicable to actions for defamation, was the appropriate state statute to be borrowed for application in a section 1983 action for violation of the plaintiff's liberty interest in his professional reputation. In *Small v. Inhabitants of City of Belfast*, 796 F.2d 544 (1st Cir. 1986), the First Circuit *reversed*, holding that the appropriate borrowing statute is Maine's six-year statute of limitations, which governs most tort actions in Maine, though not tort claims for reputational injury.

d. *Brasslett v. Cota*, 609 F. Supp. 948 (D. Me. 1984), *rev'd*, 761 F.2d 827 (1st Cir. 1985).

Brasslett v. Cota, 609 F. Supp. 948 (D. Me. 1984), held that the plaintiff's dismissal by the defendant-town manager did not violate plaintiff's first and fifth amendment rights since the plaintiff had received due process and his knowing

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536 F. Supp. 1284 (D. Me. 1982) ["Having written a painstaking and conclusive opinion making apparent the frivolousness of an appeal, the district court should not have continued defendant on bail." 701 F.2d at 7.]

and reckless false statements, inter alia, demonstrated that he would have been dismissed regardless of any protected speech. Brasslett v. Cota, 761 F.2d 827 (1st Cir. 1985), reversed on the ground that the dismissal, though not violative of plaintiff's due process rights, was in retaliation for plaintiff's protected speech.

e. U. S. v. Taylor, 585 F. Supp. 393 (D. Me. 1984), rev'd, 752 F.2d 757 (1st Cir. 1985), rev'd sub nom, Maine v. Taylor, 477 U.S. 131 (1986).

U. S. v. Taylor, 585 F. Supp. 393 (D. Me. 1984), denied a motion to dismiss an indictment brought under the Lacey Act Amendments. The defendant contended, inter alia, that the Maine statute which criminalizes the importation of live bait fish commonly used in Maine's inland waters was violative of the commerce clause. In U. S. v. Taylor, 752 F.2d 757 (1st Cir. 1985), the First Circuit reversed. In Maine v. Taylor, 477 U.S. 131 (1986), the United States Supreme Court reversed the First Circuit, holding that the evidence "amply supported the District Court's findings," id. at 151, and that the First Circuit had erred in setting aside the defendant's conviction.

f. Memorandum Decision and Order on Motion to Withdraw Guilty Plea, (U. S. v. Daniels, slip op. 84-00050-B, 84-00051-B, D. Me. February 3, 1986), rev'd, U. S. v. Daniels, 821 F.2d 76 (1st Cir. 1987).

U. S. v. Daniels, (D. Me. February 3, 1986) [copy attached as Exhibit C], held that a criminal defendant, who had already realized the principal benefit of his plea bargain with the government, thereafter could not withdraw his voluntary guilty plea. U. S. v. Daniels, 821 F.2d 76 (1st Cir. 1987), held that the failure of the parties to disclose to the district court all of the material terms of the plea agreement tipped the scales in favor of a finding that there was a "fair and just" reason to permit withdrawal of the plea. Id. at 79-80.

g. Moreau v. James River-Otis, Inc., et al., slip op. 82-0198-B (D. Me. January 30, 1985), rev'd, 767 F.2d 6 (1st Cir. 1985); on remand, Moreau v. James River-Otis, Inc., 652 F. Supp. 1030 (D. Me. 1987); aff'd sub nom, Moreau v. Local Union No. 247, 851 F.2d 516 (1st Cir. 1988).

Plaintiff, a steam plant employee, brought an action against his employer for refusal to transfer him to another department, and against the unions for failure to process his grievance. Slip op. 82-0198-B [copy attached as Exhibit D] granted summary judgment in favor of both the company and the union. The Court of Appeals reversed, 767 F.2d 6 (1st Cir. 1985), on the ground that there was insufficient evidence that the local union presidents had apparent authority to bind their international unions. On remand, the district court again granted summary judgment. 652 F. Supp. 1030. The Court of Appeals affirmed, 851 F.2d 516, remarking as follows:

> We now see no merit in the argument that because a provision of the UPIU International Constitution prohibits a local union from binding the International Union without written permission, Local 247 could not enter into this side agreement. But see Moreau, 767 F.2d at 10, where the court suggests that this possible conflict may create a genuine issue of material fact. This provision reads as follows:
>
> > No local union, its officers, agents or representatives, nor the Officers, Agent or Representatives of the International Union shall have the power or authority to make any contract or incur any liability binding on the International Union without the written consent of the International President and the approval of the International Executive Board.
>
> Article IX, Section 5, UPIU International Constitution. This provision only prohibits a local union from binding the International Union without prior permission. It does not prohibit a local union from entering into agreements that do not bind the International Union. The side agreement, which restricts employee transfers from the steam plant in the Otis mill in Jay, Maine, binds only those employees, and no others. It is a matter of purely local concern and, therefore, has no binding effect on the International Union.

851 F.2d at 520 n.6.

(3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Scheck v. Baileyville School Committee, 530 F. Supp. 679; 2 Ed. Law Rep. 770 (D. Me. 1982).

Bangor Baptist Church v. State of Maine, Dept. of Educ., 576 F. Supp. 1299 (D. Me. 1983). See also 549 F. Supp. 1208 (D. Me. 1982).

United States v. Taylor, 585 F. Supp. 393 (D. Me. 1984), rev'd, 752 F.2d 757 (1st Cir. 1985), rev'd, 477 U.S. 131 (1986).

Jones v. North American Aerodynamics, Inc., 594 F. Supp. 657; 53 U.S.L.W. 2211 (D. Me. 1984), aff'd, 767 F.2d 905 (1st Cir. 1985) (unpublished opinion; copy attached as Exhibit E).

United States v. Bassford, 601 F. Supp. 1324 (D. Me. 1985), aff'd, 812 F.2d 16 (1st Cir. 1986), cert. denied, 107 S. Ct. 1909 (1987).

Campbell v. State of Maine, 632 F. Supp. 111 (D. Me. 1985), aff'd per curiam, 787 F.2d 776 (1st Cir. 1986).

Tauvar v. Bar Harbor Congregation of Jehovah's Witnesses, Inc., 633 F. Supp. 741 (D. Me. 1985), aff'd, 787 F.2d 579 (1986), cert. denied, 479 U.S. 1038 (1987).

United States v. Gray, 635 F. Supp. 572; 54 U.S.L.W. 2599 (D. Me. 1986), aff'd, 814 F.2d 49 (1st Cir. 1987).

United States v. Pryor, 652 F. Supp. 1353 (D. Me. 1987).

Vitalone v. Curran, 665 F. Supp. 964 (D. Me. 1987).

United States v. McMahon, 673 F. Supp. 8 (D. Me. 1987), aff'd, 861 F.2d 8 (1st Cir. 1988).

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed.

    Assistant U. S. Attorney for the District of Maine (1/59 - 4/61) (appointed).

    State (chronologically) any unsuccessful candidacies for elective public office.

    None.

17. Legal Career:

    a. Describe chronologically your law practice and experience after graduation from law school including:

        1. whether you served as a clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

No.

2. whether you practiced alone, and if so, the addresses and dates:

   Yes. Main Street, Limestone, Maine; September/1956 to January/1959.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

   Office of the United States Attorney
   for the District of Maine
   Federal Building
   202 Harlow Street
   Bangor, ME 04401

   (Assistant U. S. Attorney,
   January/1959 - April/1961)

   Winchell & Cyr
   58 Franklin Street
   Bangor, ME 04401

   (Partner, April/1961 - December/1962)

   Law offices of Conrad K. Cyr, Esquire
   Main Street
   Limestone, ME 04750

   (Sole proprietor, September/1956 - January/1959).

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

   1956-59; private (solo) general law practice;
   1959-61; Assistant U. S. Attorney;
   1961-62; (partnership) general law practice.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

   During the course of my general law practice, my clientele included small businesses, farmers and other self-employed persons, as well as individual working men and women. Of course, as Assistant U. S. Attorney I represented the United States.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared in court regularly throughout all my years in law practice, but with increasing frequency while serving as Assistant U. S. Attorney [1/59 - 4/61] and with Winchell & Cyr [4/61 - 12/62].

2. What percentage of these appearances was in:

(a) federal courts - 40%
(b) state courts of record - 25%
(c) other courts - 35%.

3. What percentage of your litigation was:

(a) civil - 25%
(b) criminal - 75%.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried approximately 50 to 60 cases to verdict or judgment in federal and state courts of record, ordinarily as sole or lead counsel, occasionally as associate counsel.

5. What percentage of these trials was:

(a) jury - 50%
(b) non-jury - 50%.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

United States v. Better Homes, Inc., et al., (D. Me. 1961) [criminal].

I was primarily responsible for the coordination of a very extensive F.B.I. field investigation, the grand jury presentation, trial preparation, and trial of these F.H.A. Title I criminal fraud cases, which required approximately three weeks of trial time during January 1961, resulted in felony convictions against all ten defendants, and imposition of the largest criminal fines in the history of the District of Maine at that time.

The defendants, a construction company, its officers and sales personnel, were convicted of multiple counts of filing false claims against the United States under the Federal Housing Act. The defendants procured the signatures of home owners attesting to the completion of home improvements prior to their actual completion, in order to obtain the release of bank loans guaranteed under Title I of the Federal Housing Act. Homeowners were induced to sign completion certificates through kickbacks, vacation loans, et cetera.

Court:	U. S. District Court for the District of Maine (Hon. Edward T. Gignoux; deceased)
Co-counsel:	Peter Mills, Esquire 55 Main Street Farmington, Maine 04938 (207) 778-3521
Opposing Counsel:	Francis E. Day, Esquire (deceased) James M. Gillin, Esquire (deceased) Joseph Lyman, Esquire (whereabouts unknown) Washington, D.C.

Schultz v. United States, 174 F. Supp. 488 (D. Me. 1959), rev'd, 282 F.2d 628 (1st Cir. 1960), cert. denied, 365 U.S. 817 (1961) [civil].

I represented the defendant, the United States, and I was responsible primarily for the appellate brief. I participated in oral argument before the First Circuit Court of Appeals, along with the U. S. Attorney. The appellate proceedings resulted in the reversal of a substantial judgment against the defendant. The appellate decision vindicated the principle of Maine law that a landowner does not owe a duty of due care to a visitor, absent knowledge of the presence of the visitor and proof of a mutuality of interest.

I believe that the trial before Hon. Edward T. Gignoux, U. S. District Judge, District of Maine, took place in early 1959.

Co-Counsel:

Peter Mills, Esquire
55 Main Street
Farmington, ME 04938
(207) 778-3521

Opposing Counsel:

Hon. Robert C. Zampano
U. S. District Judge
P. O. Box 1959
New Haven, CT 06508
(203) 432-2104

U. S. v. Cushman, (D. Me. 1960). As best I can recall, this "net worth" income tax evasion prosecution required several days of trial time in 1960, and it resulted in the acquittal of the defendant, a physician.

Co-Counsel:

Peter Mills, Esquire
55 Main Street
Farmington, ME 04938
(207) 778-3521

Opposing Counsel: (unable to recall)

Soucy v. Grant, (Penobscot County Superior Court - 1961).

Two-day trial in civil suit for recovery of alleged gambling debt. Jury verdict against my client, the defendant.

No co-counsel.

Opposing Counsel:

Lewis V. Vafiades, Esquire
One Merchants Plaza
Bangor, ME 04401
(207) 947-6915

State v. Walker, (Aroostook County Superior Court - 1957).

The defendant was convicted of uttering forged checks. It was my first jury trial. I assisted Albert M. Stevens, Esquire, Presque Isle, Maine (207) 768-5481.

Opposing Counsel:

Walter S. Sage, Esquire
181 Main Street

Fort Fairfield, ME 04742
(207) 472-3321

I am unable to recall details, including the names of the parties involved in other trials. I do not have records which would enable me to discover that information.

However, while I was in practice I tried other cases against the following lawyers, or before them as judges.

Howard M. Foley, Esquire
Ben-Loch Farm
RFD 1, Box 1020
Dixmont, ME 04932
(207) 257-4768 (former Penobscot County Attorney)

Hon. Ian MacInnes
Penobscot County Courthouse
97 Hammond Street
Bangor, ME 04401
(207) 947-0751 (former Penobscot County Attorney)

Beverly W. Spencer, Esquire
49 North Main Street
Old Town, ME 04468
(207) 827-4454

Peter P. Briola, Esquire
West Broadway
Lincoln, ME 04457
Home: (207) 794-2775 (formerly, Judge, Lincoln Municipal Court)

George Wathen, Esquire (deceased)
[The last case I tried as an attorney; in late 1962; in Kennebec County Superior Court.]

Roscoe J. Grover, Jr., Esquire
716 No. Main Street
Brewer, ME 04112
(207) 989-4616

Wesley C. Archer, Esquire
17 N. Main Street
Brewer, ME 04112
Office: (207) 989-5000
Home: (207) 989-4144

Malcolm Stevenson, Esquire
210 Main Street
Ellsworth, ME 04605
Office: (207) 667-2547 or 942-5680

Home: (207) 667-8479 (formerly, Judge, Bangor
Municipal Court)

Hon. James A. Goodman
U. S. Bankruptcy Court
202 Harlow Street
Bangor, ME 04401
Office: (207) 945-0550
Home: (207) 947-7572

Hon. Thomas E. Delahanty
73 Campus Avenue
Lewiston, ME 04240
Office: (207) 783-5439
Home: (207) 784-8007

Hon. Herbert T. Silsby, III
Hancock County Courthouse
60 State Street
Ellsworth, ME 04605
(207) 667-7176

Richard E. Poulos, Esquire
44 Exchange Street
Portland, ME 04101
Office: (207) 775-2330
Home: (207) 772-9500 (formerly U.S. Referee in
Bankruptcy)

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

My judicial duties, as a bankruptcy judge and a district judge, consumed most of my professional time and energies throughout the past 28 years. While a bankruptcy judge, I was active as well in promoting legislation for the improvement of judicial administration in the bankruptcy courts. During the ten-year period from 1968-1978, I was involved as a draftsman of the so-called Judges' Bill, many of the provisions of which ultimately became law in the form of the Bankruptcy Reform Act of 1978. During this period I testified frequently on matters of bankruptcy law and bankruptcy court administration at the invitation of various subcommittees of the Judiciary Committees of the United States Senate and the House of Representatives. During my tenure as a bankruptcy judge, I founded and edited The American Bankruptcy Law Journal, which is widely regarded as the leading scholarly law review in the field of bankruptcy law. During this period I lectured extensively, throughout the United States, on bankruptcy law and administration, at law schools, before law professors, judges and practitioners, before bar associations and at continuing legal education programs. I have written extensively in the areas of bankruptcy law and administration, and commercial law.

Since my appointment to the United States District Court for the District of Maine, I have devoted all of my professional time and energies to my judicial duties; as chief district judge, judge of the United States Foreign Intelligence Surveillance Court, member of the Judicial Council for the First Circuit and member of the Committee on Bankruptcy Administration of the Judicial Conference of the United States.

Conrad K. Cyr

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   None.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   I know of no potential conflicts of interest. But I am willing to make necessary arrangements to avoid such conflicts. *See* 28 U.S.C. §455.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

   No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   See Exhibits F and G, attached.

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

   See Exhibits H and H(a).

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Yes.

I believe that it was in 1957 that I was a volunteer worker in my hometown (Limestone, Maine) for Senator Margaret Chase Smith in her reelection campaign for the United States Senate.

Conrad K. Cyr

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

   While in private practice during the late 1950's, I frequently represented indigent defendants on a pro bono basis in criminal cases, as well as in civil debt collection cases. As a small town lawyer, occasionally I was requested to provide legal advice and assistance to members of the community who were unable to afford legal services. On no occasion did I decline. Due to the passage of time and the absence of any records, I cannot now recall many individual cases. But I do remember that I successfully defended Owen Walker, a criminal defendant, in at least four separate criminal cases, without compensation. I would estimate that such pro bono work represented between 5% and 10% of total professional time expended during the late 1950's.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership, what you have done to try to change these policies?

   I have never belonged to any organization which invidiously discriminated on the basis of race, sex or religion. However, I was a member of the following national organizations, whose membership was restricted to males during a period when such restrictions were commonplace:

Boy Scouts of America	(Approx. 1944 to 1946)
Rotary International	(Approx. 1957 to 1962).

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end

(including the circumstances which led to your nomination and interviews in which you participated).

There is no judicial selection commission in Maine or in the First Circuit which is charged with responsibility for recommending candidates for nomination to the court of appeals. I have been interviewed by attorneys in the Department of Justice and by the First Circuit representative on the Judicial Selection Committee of the American Bar Association.

As chief judge of the United States District Court for the District of Maine, at the time the present vacancy on the United States Court of Appeals for the First Circuit was created by Judge Frank M. Coffin's announced intention to assume senior status effective February 1, 1989, I made known my interest in the present vacancy, which was widely expected to be filled by a Maine resident.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

   No.

5. Please discuss your views on the following criticism involving "judicial activism."

   The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

   Some of the characteristics of this "judicial activism" have been said to include:

   a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

   b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

   c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The responsibility of the Third Branch is the adjudication of "cases and controversies" relegated to the federal courts under Article III, section 2, of the United States Constitution, including those arising under "the Laws of the United States. . . ." The Legislative Branch is constitutionally entrusted with responsibility for making "the Laws of the United States" which it is the function of the Judicial Branch to apply conformably with the Constitution. The carefully designed institutional "checks and balances" among the three coequal branches of government are susceptible of serious dislocation in consequence of institutional expansionism on the part of any branch, the judiciary included. As it is the principal responsibility of the Judicial Branch to monitor the constitutional allocation of governmental responsibilities among the three coequal branches, however, encroachment by the Judicial Branch upon the lawmaking function of the Legislative Branch would threaten the constitutionally-ordained separation of powers. Moreover, our system of representative democracy would be placed at risk of fundamental alteration by a "judicial activism" which arrogates to an unelected judiciary the lawmaking function of the Legislative Branch. Absent meticulous conformance on the part of the Judicial Branch with the proper bounds of its critical role as the governmental arbiter of our constitutional order, the "checks and balances" central to our constitutional system cannot function as designed.

The descriptions of the trends and tendencies said to characterize "judicial activism" in items 5. a. through e. are without sufficient circumstantial content to enable much beyond a broad balancing of the competing institutional and societal goals reflected in each of the tendencies ascribed to the judiciary. Absent their specific factual context, it is difficult to evaluate the extent of any "judicial activism" evidenced by these tendencies, because, for example, it is necessary to know whether the particular judicial action involved was prompted by constitutional or legislative mandate.

The responsibility for constitutional interpretation must not be seen as a judicial license to legislate, notwithstanding the fact that the myriad unforeseen problems confronting our courts today do not lend themselves to ready resolution through simple reference to the language of the Constitution. The front-line role in adapting governmental responses to changing times must remain with the Legislative Branch.

There are other important guidelines to faithful constitutional interpretation, including an appreciation for the intentions of the framers of the Constitution, its historical context and evolution, but none is as important as the role envisioned by the judiciary itself in the important task of constitutional interpretation. It must remain the responsibility of the courts to protect and defend the Constitution from all forces which would retreat from its vital guarantees. In so doing, as all must realize, even the search for constitutional meaning, through recourse to the intent of the framers, history, and the basic objects and purposes of the Constitution, places a "creative" responsibility on our courts. We tend to understand history, not quite as it was lived by the Framers of the Constitution, but as we view their times in light of what is important to us today; that in itself may lead reasonable minds to different historical perspectives. Nevertheless, a steadfast respect for constitutional and jurisprudential constraints upon the judicial process itself is the surest safeguard against any form of usurpation resulting from "judicial activism."

People For The American Way
ACTION FUND

October 2, 1989

The Honorable Joseph Biden
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Sen. Biden:

Attached is a brief report by People For the American Way on the nomination of Conrad Keefe Cyr to the First Circuit Court of Appeal. We ask that it be included in the hearing record.

Thank you,

Melanne Verveer

2000 M Street, NW, Suite 400, Washington, D.C. 20036 (202) 467-4999

REPORT OF
PEOPLE FOR THE AMERICAN WAY ACTION FUND
ON THE NOMINATION OF
CONRAD KEEFE CYR TO THE
FIRST CIRCUIT COURT OF APPEAL

I. Nominee's Background

Judge Cyr earned his B.S. from Holy Cross College in 1953 and his law degree from Yale Law School in 1956. After his graduation from Yale, he was a self-employed lawyer in Limestone, Maine. He began working as an Assistant U.S. Attorney for the District of Maine in January 1959. Two and a half years later he started his own law partnership, Winchell and Cyr, in Bangor, Maine. From July 1961 through October 1981 Cyr was a judge in the U.S. Bankruptcy Court for the District of Maine. President Reagan appointed him to the United States District Court for the District of Maine in 1981 to take the seat vacated when current Majority Leader George Mitchell was appointed to the Senate. Judge Cyr has served as Chief Judge of the District Court since June 1983. He has also served as one of seven judges of the United States Foreign Intelligence Surveillance Court since May 1987.

Judge Cyr is a member of various local and national bar associations and several judicial organizations. He has also served as an advisor to the Maine Bar section on Bankruptcy and Reorganization and is a guest lecturer at various law schools. Judge Cyr has published extensively on bankruptcy matters and has testified before Congress on numerous occasions regarding bankruptcy legislation and related matters.

The only pro bono activities Judge Cyr identified in his Biographical Questionnaire involve the representation of indigent defendants and work in civil debt collections in the late 1950's.

II. Nominee's Record

The People For The American Way Action Fund examined Judge Cyr's decisions in the areas of civil rights and civil liberties. Of 114 published opinions during his tenure as a district court judge in Maine, some 30 cases involved constitutional, civil rights, or criminal law issues. The following discussion focuses on the cases which, because of the nature of their facts or the fact that Judge Cyr's decisions were reversed, reveal the nominee's approach to such issues. There are several cases in which Judge Cyr's ruling favored the more narrow interpretation of a constitutional doctrine, and thereby denied protection. In one of these, Brasslett v. Cota (see discussion below) 609 F.Supp. 948 (D.Me. 1984), Judge Cyr was taken to task for this by the First Circuit when it reversed his decision.

Based on our review, it can be said that the opinions Judge Cyr has written during his eight years as a District Court Judge are thoughtful and reasoned, if on occasion engineered somewhat to reach his desired conclusion. He has a reputation among lawyers for being bright, well prepared, and capable of understanding issues in complex cases. Critical comments focused on his moving his docket slowly.

III. Specific Issues

A. First Amendment Cases

In Brasslett v. Cota 609 F.Supp 948, Judge Cyr found that a public employee's statements in a television interview which ultimately led to his dismissal were not protected by the First Amendment. Brasslett, a small town fire chief was fired, at least in part, because during a television interview he criticized the town's fire fighting preparedness. Judge Cyr concluded "There is no question that plaintiff's statements to the interviewer...were recklessly false." 609 F.Supp at 965. He found further that these remarks were so disruptive as to outweigh the plaintiff's First Amendment "interest in commenting irresponsibly upon matters of public concern." As a result, he declared them not constitutionally protected. Id at 968. Judge Cyr added that based on his review of the facts, the plaintiff would have been dismissed even in the absence of these remarks, protected or unprotected. Id.

The First Circuit reversed Judge Cyr's ruling. Brasslett v. Cota 761 F.2d 827 (1st Cir. 1985). The appeals court disagreed with Judge Cyr's interpretation of the facts and held that the dismissal was in retaliation for the plaintiff's speech on television. With respect to Judge Cyr's legal conclusions, the court held that even if false, the remarks made by the plaintiff concerning the town's fire fighting capabilities were protected by the First Amendment. In so finding the First Circuit wrote:

> In conclusion, having independently reviewed the record, we believe that the trial judge, in finding that the plaintiff knowingly or recklessly made false statements to the press, impermissibly indulged every conceivable inference against the plaintiff. Because this is inconsistent with a judge's obligation to vigorously guard and preserve an individual's First Amendment rights, this finding must be overturned. 761 F.2nd at 843-4.

In Scheck v. Baileyville School Committee, 530 F. Supp. 679 (D. Maine 1982), Judge Cyr ordered a banned book about American servicemen wounded in Vietnam returned to the shelves of a public high school's library. The critically acclaimed book, *365 Days* by Dr. Ronald Glasser, was removed from the shelves of the Woodland High School because it contained language some parents and school board members found objectionable.

Judge Cyr recognized that removal of a book from a school library, in contrast to routine book selection decisions, implicates "the first amendment right of secondary students to receive information and ideas there written." *Id*. at 687. He termed a library, " the least obtrusive conventional communication resource available," and concluded that banning this book violated the students' constitutional rights. Judge Cyr noted that the facts here revealed only a vague objection by the school board to language in the book. However, had the board, for example, been more specific in documenting its objections to the book, more scrupulous in the procedures it followed, and more careful in tailoring its remedy, then perhaps the removal would have passed constitutional muster. *Id* at 691-92.

B. Fourth Amendment Cases

Judge Cyr has narrowly interpreted the protections of the Fourth Amendment by expansive readings of the exceptions to the search warrant requirement. In *United States v. Sawyer*, 630 F. Supp. 889 (D. Me. 1986), Judge Cyr upheld the constututionality of a search which involved among other measures, the lifting of a truck's hood to examine the serial numbers on an engine. The Supreme Court ruled in *Cardwell v. Lewis* 417 U.S. 583 (1974) that since the exterior of the automobile cannot escape public scrutiny, to examine it is not a search for Fourth Amendment purposes. Basing his decision on the *Cardwell* argument, Judge Cyr stated that lifting the hood was not a Fourth Amendment search either, because, in this instance, the engine could have been examined without opening the hood at all. Moreover, he argued, even if assumed to be an improper intrusion, this particular examination was reasonable because of the officers' other observations of the truck's exterior.

In *United States v. Sullivan*, 544 F. Supp. 701 (D.Me. 1982), *aff'd* 711 F.2d 1 (1st Cir. 1983), Judge Cyr upheld the constitutionality of a warrantless search of an air freight package. In *Sullivan*, an airline employee, assisted by the chief of airport security, a police officer, conducted an x-ray scan, a geiger-counter scan, and finally a complete inspection of the contents of a package left with the airline for shipping. Judge Cyr held that the airline official had the authority to give third-party consent to search a customer's package. The Supreme Court had held that, under some limited circumstances entrusting one's luggage to a carrier may assume the risk of a third party inspection. However, the Supreme Court noted that if a container is locked or wrapped, this negates an inference that a customer has assumed the risk that an airline official might examine its contents or allow someone else to look inside. Frazier v. Cupp, 394 U.S. 731, 740.

Judge Cyr, however, found that assumption of the risk, regardless of the locked or wrapped nature of the container, can be implied through circumstantial evidence. In this case, the owner of a wrapped package acted nervous, mislabeled the package's contents, had an illegible signature and requested the higher-priced, quicker shipping route for his package. These circumstances, Judge Cyr held, not only inferred an assumption of the risk of inspection, but openly invited it. Thus, the airline official had the appropriate authority to give a third-party consent to the police to open the package.

Finally, Judge Cyr disposed of the last objection to the search by stating that even if it were unreasonable, it still was not prohibited by the Fourth Amendment because it was a private, not governmental search . The Fourth Amendment does not apply to private searches, only searches by the state. In Sullivan, Judge Cyr held that this search, undertaken by a police officer to assist, at the request of a private officer, did not constitute sufficient governmental action to qualify as a governmental search. 544 F.Supp.at 708-709.

Another warrant exception given a broad reading by Judge Cyr was the "plain view" doctrine. This doctrine allows the warrantless seizure of contraband if an officer, who is otherwise lawfully on a premises, sees the substance in "plain view." In United States v. Pryor, 652 F.Supp. 1353 (D.Me. 1987), Judge Cyr held permissible a search which produced incriminating evidence even though the objects found were not the subject of the warrant.

Judge Cyr rejected the defendant's argument that this search fell outside the "plain view" doctrine and upheld its propriety. He found that the officers' search of a closet was legitimate and that, once there, the further exploration of the space followed. He ruled that an officer doesn't need to actually see the contraband for the "plain view" doctrine to operate; the presence of the contraband need only be "obvious to the senses." That is, the contraband need only reveal itself in a characteristic way to one of the senses, including touch, to circumvent the warrant requirement for its seizure. Id. at 1367. While the opinion cites case law in support of this conclusion, the description of the search defines the plain meaning of "plain view."

C. Statutory Civil Rights Cases

A decision by Judge Cyr had the effect of limiting the scope of section 1983 Civil Rights protections. In Small v.

Inhabitants of City of Belfast, 617 F.Supp. 1567 (D.Me. 1985), rev'd, 796 F.2d 544 (1st Cir. 1986), Judge Cyr held that a two-year statute of limitations applicable to defamation, assault and battery, false imprisonment, and medical malpractice, rather than a six-year statute applicable to all other "personal injury" claims would operate with respect to all section 1983 claims brought in Maine. The effect of this was to bar a special police officer's action against a city and a city manager under section 1983. Because of the wide range of actions that are the subject of 1983 claims, the First Circuit reversed, holding that the more broadly applicable six year statute of limitations should apply. Small v. Inhabitants of City of Belfast, 796 F.2d 544, 549 (1st Cir. 1986).

The interesting aspect of Judge Cyr's decision is that his holding was reached despite his own early observation that two recent U.S. Supreme Court decisions "make it clear that the two-year limitations period does not apply to plaintiff's 1983 claim." With somewhat tortured reasoning, involving in part analogies to the common law distinction between cases sounding in trespass or trespass on the case, he nevertheless reached the opposite conclusion; the two-year statute did apply. Reversing Judge Cyr, the First Circuit relied completely on the Supreme Court precedent that Judge Cyr tried to reason his way around, Wilson v. Garcia.

AMERICAN BAR ASSOCIATION
Standing Committee on Federal Judiciary
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Washington, DC 20036
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ELEVENTH CIRCUIT
[illegible]
DISTRICT OF COLUMBIA CIRCUIT
[illegible]
FEDERAL CIRCUIT
[illegible]

August 17, 1989

CONFIDENTIAL

Hon. Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate
SR 221
Washington, D.C. 20510-0802

RE: Conrad K. Cyr
United States Court of Appeals
for the First Circuit

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of the Hon. Conrad K. Cyr to the United States Court of Appeals for the First Circuit.

Our Committee is unanimously of the opinion that Judge Cyr is Well Qualified for this appointment.

A copy of this letter has today been sent to Judge Cyr and to Barbara S. Drake, Deputy Assistant to the Attorney General of the United States, for their information.

Sincerely,

Ralph Lancaster

Ralph I. Lancaster, Jr.
Chairperson

RIL/sm

cc Hon. Conrad K. Cyr
Barbara S. Drake, Esq.
All Committee Members

REBECCA BEACH SMITH

Birth:	May 25, 1949	Hopewell, Virginia
Legal Residence:	Virginia	
Marital Status:	Married	John L. Smith, Jr.
Education:	1967-1971	College of William and Mary B.A. degree
	1971-1973	University of Virginia Master's Degree
	1975-1977	American University Law School
	1977-1979	Marshall-Wythe School of Law College of William and Mary J.D. degree
Bar:	1979	Virginia
Experience:	1979-1980	Law Clerk The Honorable J. Calvitt Clarke, Jr. United States District Court for the Eastern District of Virginia
	1980-1985	Willcox & Savage, P.C. Norfolk, Virginia Attorney
	1985-present	United States Magistrate United States District Court Eastern District of Virginia Norfolk Division
Office:	United States Courthouse 600 Granby Street Norfolk, Virginia 23510 804 441-6655	
Home:	Norfolk, Virginia 23508	

To be United States District Judge for the Eastern District of Virginia

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

   Rebecca Beach Smith
   Rebecca Lynn Beach (maiden name)

2. Address: List current place of residence and office address(es).

   Home:
   Norfolk, Virginia 23507

   Office:
   United States District Court
   Eastern District of Virginia
   Walter E. Hoffman U.S. Courthouse
   600 Granby Street
   Norfolk, Virginia 23510

3. Date and place of birth.

   May 25, 1949, Hopewell, Virginia.

4. Maritial Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

   Married to John Lucian Smith, Jr., attorney with the law firm of Outland, Gray, O'Keefe & Hubbard, 112 Coastal Way, Post Office Box 2250, Chesapeake, Virginia 23320.

5. Education: List each college and law school you have attended, including date of attendance, degrees received, and dates degrees were granted.

   Legal: Marshall-Wythe School of Law, College of William and Mary, Williamsburg, Virginia, August 1977 to May 1979. Doctor of Jurisprudence, May 13, 1979. Ranked 1 in class of 135.

American University Law School, Washington, D.C., August 1975 to May 1977. Completed 39 semester hours. Top 1% of class.

Graduate: University of Virginia, Charlottesville, Virginia, 1971-73. Master's degree in City Planning and Public Administration and Certificate in Comprehensive Health Planning, June 3, 1973. Ranked 1 in class of 20.

Undergraduate: College of William and Mary, Williamsburg, Virginia, 1967-71. Bachelor of Arts with Honors in Government, June 6, 1971. Top 2% of class.

Further studies in Comparative Government with the London School of Economics, Schiller College in West Berlin, and the University of Moscow, U.S.S.R., Summer, 1970, through the American Institute for Foreign Study, Greenwich, Connecticut. Non-degree program.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connection as an officer, director, partner, proprietor, or employee since graduation from college.

1985 to Present - United States Magistrate, United States District Court for the Eastern District of Virginia, Norfolk Division.

1980-85 - Attorney with the law firm of Willcox & Savage, P.C., Norfolk, Virginia. Practice areas included general civil litigation, medical malpractice litigation, federal practice and procedure, commercial law, and products liability. Also served on firm's legal personnel and recruiting committee, 1983-85.

1979-80 - Law Clerk to the Honorable J. Calvitt Clarke, Jr., United States District Judge, Eastern District of Virginia, Norfolk Division.

1978 - Law Clerk with the firm of Kaufman and Oberndorfer, Norfolk, Virginia. Experience included legal research and writing.

1974-77 - Research Associate with the National Academy of Science, Institute of Medicine, Washington, D.C. Responsibilities included field research, academic research, and professional writing in the areas of Medicare and Medicaid compensation and medical malpractice.

1973-74 - Planning Analyst with Enviro-Med, Inc., Washington, D.C. and La Jolla, California. Experience included work on Environmental Impact Statements and health administration studies.

1972 - Research Assistant with the Center for Comprehensive Health Planning, University of Virginia Medical Center, Charlottesville, Virginia. Duties involved collection and analysis of data on emergency medical services in a ten-county area of western Virginia.

1971-72 - Ford Foundation Fellow at the Federal Executive Institute, Charlottesville, Virginia. Experience included the administration of training programs for federal executives, conducting seminars, teaching, and academic research.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

College of William and Mary: Phi Beta Kappa, Alpha Lambda Delta and Kappa Delta Pi scholastic honorary fraternities; Scott Foundation Award for four years of undergraduate study; Honors Program sophomore, junior, senior years.

University of Virginia: Ford Foundation Fellowship for graduate study in Public Administration, 1971-72; Lychnos Society for outstanding graduate scholarship and leadership; 1973 recipient of the Virginia Citizens' Planning Association Award.

American University Law School: Law Review; Book Awards in Criminal Law, Administrative Law, and Legal Writing.

Marshall-Wythe School of Law, College of William and Mary: Order of the Coif; Law Review, Executive Editor 1978-79; 1979 recipient of The Weber Diploma, awarded by law faculty to member of graduating class with greatest professional promise; elected to St. George Tucker Society for academic achievement and leadership; West Publishing Company Second and Third Year Scholastic Book Awards; John Marshall Society, Fellow.

Selected as an Outstanding Young Woman of America for 1979.

Hopewell High School, 1967 Class Valedictorian.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Virginia State Bar, Second Congressional District Representative on the Judicial Nominations Committee, 1983-85; Virginia Bar Association, Member of the 1982 and 1983 Virginia Bar Association Journal Committees, 1982 American Bar Association/Young Lawyers Division Liaison Committee of the Virginia Bar Association, 1981 Public Relations Committee, 1978-79 Student Member of the Eminent Domain Committee; American Bar Association, currently Judicial Administration Division, previously Litigation and General Practice Sections, Member of the United States Magistrates' Committee of the ABA National Conference of Special Court Judges, Charter Member of the ABA Forum Committee on Air and Space Law, 1983-85; Norfolk-Portsmouth Bar Association, Law Day Committee, 1984-85; Federal Bar Association; Virginia Women Attorneys Association, Executive Board, 1983-84, Judicial Nominations Committee, 1981-83, Legislative Committee, 1982-83; Tidewater Women's Bar Association, Executive Board, 1980-82, Vice President, 1982, Program Chairman, 1980-81, Nominations Committee, 1980-81; Virginia Trial Lawyers Association; National Council of United States Magistrates; National Association of Women Judges; Founding Member of the Lawrence W. I'Anson-Walter E. Hoffman American Inn of Court, Master of the Bench, Executive Committee and Chancellor (Vice President), 1987 to present; William and Mary Law Review Association; Supreme Court Historical Society, Vice President, William and Mary Law School Chapter, 1978-79; Member of the Fourth Circuit Judicial Conference, 1985 to present.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies.

None.

Please list all other organizations to which you belong.

Chrysler Museum of Norfolk, Virginia; Jean Outland Chrysler Library Associates; Virginia Opera Association; Friends of the Zoo, Virginia Zoological Park, Norfolk, Virginia; Friends of the Norfolk Public Library; The Harbor Club, Norfolk, Virginia; Church of the Good Shepherd (Episcopal), Norfolk, Virginia; St. Mary's Soup Kitchen Volunteer.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of Virginia, May 2, 1980.

United States District Court
for the Eastern District of Virginia, December 23, 1980.

United States Court of Appeals
for the Fourth Circuit, December 24, 1980.

United States Bankruptcy Court
for the Eastern District of Virginia, May 20, 1981.

United States Supreme Court, February 25, 1985.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Published Writings:

The Constitutional Considerations of Medical Malpractice Screening Panels, The American University Law Review, Volume 27, Number 1, Fall 1977.

United States v. Brown: Implementing Massiah, William and Mary Law Review, Volume 19, Number 1, Fall 1977.

Coordinating Editor for FUNDAMENTALS OF ENVIRONMENTAL LAW: CASES AND NOTES by Scott C. Whitney (Government Institutes, Inc. 1978).

Speeches:

Civil Proceedings Before United States Magistrates, March 15 and 23, 1988, Continuing Legal Education Lecture.

An Explication of Brutus XI: The Anti-Federalist and Federalist Dialogue, September 28, 1988, delivered as part of a local lecture series on the formation of the Constitution.

NOTE: There were no press reports in regard to these speeches. Copies of the brochures announcing the lectures are attached.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. September 27, 1988.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

United States Magistrate, United States District Court, Eastern District of Virginia, Norfolk Division, from July 1, 1985, to the present time. No other judicial office previously held.

I was appointed for an eight-year term by the United States District Judges for the Eastern District of Virginia, who made the appointment from a list of five individuals submitted by a merit selection panel, consisting of both attorneys and non-attorneys. The merit selection panel reviewed the background credentials of and interviewed the candidates, before submitting the names to the district court. The appointment is renewable for successive eight-year terms, until age 70, and thereafter on a yearly basis.

With consent of the parties and assignment by the court, the trial jurisdiction of United States Magistrates since October, 1979, has included any and all civil cases, whether jury or non-jury and regardless of the subject matter or amount in controversy, and any and all non-felony criminal cases. The sole limitation on trial jurisdiction has been conducting actual trials of felony cases. Even without consent of the parties, any nondispositive pretrial motion (e.g., procedural and discovery motions), including those in felony cases, may be addressed by a magistrate, and dispositive motions (e.g., motions for summary judgment, motions to dismiss, and motions to suppress evidence) can be assigned to a magistrate for report and recommendation concerning disposition. United States Magistrates also handle preliminary matters in felony cases, such as arraignments, bail hearings, and appointment of counsel, and they preside over grand juries for the district court. They conduct initial and final pretrial conferences and settlement conferences in civil cases. They review prisoner litigation and conduct necessary evidentiary hearings in prisoner cases. Further, United States Magistrates may serve as special masters in complex cases under Rule 53 of the Federal Rules of Civil Procedure.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) The ten most significant opinions are as follows:

1. Jonathan Corporation v. Prime Computer, Inc., 114 F.R.D. 693 (E.D. Va. March 18, 1987) (opinion on the waiver of the attorney-client privilege).

2. Roxann Casey v. Insurance Company of North America, Civil Action No. 85-746-N (E.D. Va. Feb. 14, 1986) (opinion on the application of the work product doctrine).

3. H. F. Staiger Company v. P.T. Trikora Lloyd, Civil Action No. 88-65-N (E.D. Va. Sept. 22, 1988) (admiralty jurisdiction, final opinion after trial).

4. Inter-State Assurance Company v. Mary Grace Condon, Civil Action No. 86-599-N (E.D. Va. May 21, 1987) (diversity jurisdiction, final opinion after trial), aff'd (E.D. Va. Oct. 29, 1987), aff'd, No. 87-3895 (4th Cir. June 20, 1988).

5. George Lee Hinton v. Arresting K-9 Officer, Civil Action No. 85-174-N (E.D. Va. Jan. 14, 1986) (recommendation after hearing on a suit under the Civil Rights Act, 42 U.S.C. § 1983), final order adopting recommendation (E.D. Va. Mar. 10, 1986), aff'd, No. 86-7092, (4th Cir. Oct. 2, 1986).

6. Cynthia Drake v. Otis R. Bowen, M.D., Secretary of the Department of Health and Human Services, Civil Action No. 88-62-N (E.D. Va. Mar. 14, 1989) (decision in social security case on statutory time limits and waiver thereof).

7. Buddy Earl Justus v. Edward W. Murray, Director, Virginia Department of Corrections, Civil Action No. 88-320-N (E.D. Va. Jan. 13, 1989) (recommendation to dismiss habeas corpus petition on a Virginia death penalty case), final order adopting recommendation (E.D. Va. Apr. 11, 1989), appeal docketed, No. 89-4005 (4th Cir. May. 16, 1989).

8. Julius Cornell Pittman v. Edward W. Murray, Director, Virginia Department of Corrections, Civil Action No. 86-307-N (E.D. Va. July 31, 1987) (recommendation after hearing on a habeas corpus petition challenging a guilty plea), final order adopting recommendation (E.D. Va. Sept. 1, 1987), aff'd, No. 87-7332 (4th Cir. Dec. 21, 1988).

9. Wallace Henry Rawls v. Edward W. Murray, Director, Virginia Department of Corrections, Civil Action No. 86-57-N (E.D. Va. Feb. 28, 1989) (recommendation after hearing on a habeas corpus petition raising attorney conflict of interest), final order adopting recommendation (E.D. Va. Mar. 21, 1989), appeal docketed, No. 89-7593 (4th Cir. Apr. 19, 1989).

10. United States v. James Christian Moore, Jr., Criminal No. 86-57-NN (E.D. Va. Nov. 5, 1986); United States v. Thomas R. Sutherland, a/k/a "Tom", Criminal No. 87-42-NN (E.D. Va. Oct. 7, 1987); United States v. Michael J. Bushman, a/k/a "Bush Hog", Criminal No. 87-100-N (E.D. Va. Oct. 7, 1987); United States v. George Harris, Criminal No. 88-76-N (E.D. Va. June 15, 1988); and United States v. Craig Dee Kunkle, Criminal No. 89-5-N (E.D. Va. Jan. 12, 1989) (detention orders from five major criminal cases).

(2) In the last four years as United States Magistrate, one Report and Recommendation in a habeas corpus case, which was accepted and adopted by the district judge, was reversed by the United States Court of Appeals for the Fourth Circuit, and one Order setting conditions of release in a criminal case was reversed by a district judge, both of which are detailed below. My entire record in regard to appeals is as follows:

(a) I have handled over a thousand misdemeanor cases, with five appeals and no reversals.

(b) I have conducted hundreds of detention and bond hearings, with less than ten appeals and one reversal. In the case of United States v. Gary L. McMillan, Criminal

No. 87-100-N, United States District Judge J. Calvitt Clarke, Jr., on de novo review, detained defendant until the time of trial, after I had set very restrictive conditions of release. A copy of Judge Clarke's detention Order and my bond Order are attached.

(c) I have heard hundreds of civil matters, with three appeals and no reversals. On the one civil consent trial that was appealed to both a district judge and the Fourth Circuit Court of Appeals, I was upheld at both levels. That case, Inter-State Assurance Company v. Mary Grace Condon, Civil Action No. 86-599-N, is attached as item 4 in response to part 1 of this question.

(d) Of the over one hundred habeas corpus cases and the numerous cases under 42 U.S.C. § 1983 and the Social Security Disability Act that I have handled, many appeals have been taken from my decisions. I have been affirmed by a district judge or the court of appeals in all cases where the parties consented to my trial jurisdiction. In all other cases where I recommended dispositions, the district judge has accepted and adopted my Orders and Reports and Recommendations in the matters and has been affirmed by the Fourth Circuit, with one exception. In the case of Wallace Henry Rawls v. Edward W. Murray, Director, Virginia Department of Corrections, Civil Action No. 86-57-N, my Report and Recommendation dated September 5, 1986, recommending dismissal of petitioner's second federal writ of habeas corpus for being a successive petition, was accepted and adopted by the district judge by Order of September 24, 1986. The United States Court of Appeals for the Fourth Circuit reversed this Order and remanded the case for a hearing on the merits of one claim in the petition. Because petitioner's first federal writ of habeas corpus was filed prior to the United States Supreme Court's decision in Rose v. Lundy, 455 U.S. 509 (1982), and because of petitioner's claim that he was unaware of his attorney's alleged conflict of interest when he filed his first federal petition, and other factors peculiar to the case, the appellate court required a hearing on the petition. A copy of the Fourth Circuit's Opinion, together with my first Report and Recommendation, are attached. My second Report and Recommendation, rendered after the hearing in the case, is attached as item 9 in response to part 1 of this question.

(3) I have handled 126 habeas corpus cases and many cases under 42 U.S.C. § 1983, all involving constitutional issues. As a matter of policy, West Publishing Company has declined to publish opinions of federal magistrates except in the Federal Rules Decisions. Therefore, these habeas corpus opinions are not officially reported. Copies of some of the significant opinions are attached in response to part 1 of this question, as items numbered 5, 7, 8, and 9, with citations to appellate review or status.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

    None.

17. Legal Career:

    a. Describe chronologically your law practice and experience after graduation from law school including:

        1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

            Yes. 1979-80, Law Clerk to the Honorable J. Calvitt Clarke, Jr., United States District Judge, Eastern District of Virginia, Norfolk Division.

        2. whether you practiced alone, and if so, the addresses and dates;

            No.

        3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

            1980-85, Attorney with Willcox & Savage, P.C.
            (approximately a sixty attorney law firm)
            1800 Sovran Center
            Norfolk, Virginia 23510

            Summer, 1978, Law Clerk with Kaufman & Oberndorfer
            (now Kaufman & Canoles)
            2000 Sovran Center
            Norfolk, Virginia 23510

    b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

            I was involved almost exclusively in a trial practice as an attorney at Willcox & Savage, P.C. My practice was a varied litigation practice, in state and federal courts, ranging from small claims to antitrust, aviation, and general commercial/corporate litigation. I was involved in insurance defense work, with a focus on medical malpractice, professional liability, and products liability cases.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My typical clients were insurance companies, and their insureds, and private businesses, both small and large. I also represented individuals as plaintiffs and defendants in civil suits, as well as doing some criminal and domestic relations cases for individuals. I specialized in medical malpractice defense, general commercial litigation, and products liability cases.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Approximately 95% of my practice was a trial practice. Therefore, I appeared in court regularly, about 8 to 10 times per month.

2. What percentage of these appearances was in:

(a) federal courts, 40%;
(b) state courts of record, 40%;
(c) other courts, 20%.

3. What percentage of your litigation was:

(a) civil, 90%;
(b) criminal, 5%;
(c) domestic relations, 5%.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Approximately 6 cases during each year of my 5 years of law practice, for a total of 30 cases. I was sole or chief counsel in over half of these cases, and associate counsel in the others.

5. What percentage of these trials was:

(a) jury, 25%;
(b) non-jury, 75%.

NOTE: I have not practiced law since July 1, 1985, when I became a United States Magistrate. As such, I am in court almost daily, with a full range of court

responsibilities as delineated in response to Question I.14 above. Approximately 60% of my cases are criminal matters and 40% are civil matters. All of my cases as a United States Magistrate are of record. In addition to nondispositive preliminary civil and criminal matters, numerous civil trials and over a thousand misdemeanor criminal trials, both non-jury and jury, have been tried to verdict or judgment. Some of the most significant litigated matters handled by me have been as a United States Magistrate.

18. Litigation: **Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual names, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1980-85:

1. Janet A. Rodgers v. Federal Energy Corporation, Law No. L-82-267, Circuit Court of the City of Norfolk, Virginia.

This suit, filed February 16, 1982, alleged breach of contract and negligence on the part of defendant, a Texas corporation, which, acting as agent for the plaintiff, filed improperly completed applications on her behalf for noncompetitive oil and gas leases in a lottery conducted by the Federal Bureau of Land Management. Plaintiff won an oil and gas lease on land in Wyoming, but her application was rejected because it had not been properly completed by defendant. The case involved significant legal questions of jurisdiction, choice of laws, agency, and validity of exculpatory contract provisions.

I was lead counsel for the plaintiff through trial. After pretrial motions on the jurisdiction of the Virginia court, as to which the plaintiff prevailed, and extensive discovery, the case was tried before Judge John W. Winston without a jury on December 11-12, 1984. Judge Winston found for the defendant on the ground that the defendant's error was excused by erroneous advice of a federal employee, and he further ruled that a limitation of damages clause was valid under Texas and Virginia law.

My representation terminated in May, 1985, due to my appointment as United States Magistrate. Co-counsel then pursued an appeal after my appointment, but the Virginia supreme court did not grant a writ.

Co-counsel:	John L. Smith, Jr., Esquire Outland, Gray, O'Keefe & Hubbard 112 Coastal Way Chesapeake, Virginia 23320 (804) 547-0171
Counsel for Defendant:	Paul M. Lipkin, Esquire Goldblatt, Lipkin, Cohen, Anderson, Jenkins & Legum, P.C. 415 St. Paul's Boulevard Norfolk, Virginia 23514 (804) 627-2486
	Joel Held, Esquire Durant and Mankoff 3900 InterFirst One Dallas, Texas 75202 (214) 748-0074

2 and 3. Mary J. Gentry v. Piper Aircraft Corporation and AVCO Corporation, Civil Action No. 82-768-N, United States District Court, Eastern District of Virginia, Norfolk Division.

The complaint was filed on October 15, 1982. The trial was set for June 27, 1983, with a jury. A release was signed on July 14, 1983. The dismissal order was entered in the case by Judge John A. MacKenzie on August 29, 1983. I entered the case as counsel for AVCO Corporation in March, 1983, and took on significant responsibilities with regard to contested discovery matters and trial preparation.

Ruth S. Roughton, Administratrix of the Estate of Harry L. Roughton, Deceased, and Ruth S. Roughton v. Piper Aircraft Corporation and AVCO Corporation v. Billy J. Gentry, Civil Action Nos. 83-482-N and 83-483-N, United States District Court, Eastern District of Virginia, Norfolk Division.

The complaints in these cases were filed on July 18, 1983. The cases were consolidated for purposes of discovery and trial by Order on Initial Pretrial Conference on September 14, 1983. The trial was set for March 20, 1984, with a jury. AVCO Corporation's third party complaint was filed on October 14, 1983. An agreed dismissal order was entered by

Judge J. Calvitt Clarke, Jr., on January 16, 1984, on the third party complaint. The order approving the settlements and releases was endorsed by counsel and entered on April 6, 1984, by Judge Clarke. I was lead counsel for AVCO Corporation throughout these two cases.

All three of the cases (Civil Action Nos. 82-768-N, 83-482-N, 83-483-N) involved suits by passengers aboard an aircraft, owned and operated by Billy Joe Gentry, that crashed on July 19, 1981, due to an engine failure and forced landing. Ruth S. Roughton and Mary J. Gentry suffered serious injuries, and Harry L. Roughton was killed as a result of the crash. The plaintiffs alleged that the airplane crash and their injuries were proximately caused by the negligence, gross negligence, breach of express warranty, and breach of implied warranty by both defendants, AVCO Corporation and Piper Aircraft Corporation. AVCO Corporation, which manufactured the plane's engine, alleged that any damages were directly and proximately caused by the negligence of Billy Joe Gentry in the maintenance and operation of the aircraft.

The three cases involved complex legal issues in the area of aviation law and products liability law, and issues of choice of laws, contribution, and the right to sue and to defend because of prior covenants not to sue and settlements. Discovery questions relating to work product and attorney-client privilege were also addressed. The cases constituted protracted litigation, involving almost all aspects of discovery and trial preparation under the Federal Rules of Civil Procedure. Each of the three cases was settled shortly before trial. However, numerous pretrial hearings were conducted by Judge Clarke, and by United States Magistrate James T. Turner.

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Counsel for Billy J. Gentry:	Harvey E. White, Jr., Esquire William S. Sands, Jr., Esquire White, Johnson & Lawrence 906 One Main Plaza East Post Office Box 3315 Norfolk, Virginia 23514 (804) 627-7705

4. Bay Harbor Brokerage, Inc., a Virginia corporation, v. George Dragas, Jr., E. L. Barclay, Intrepid Yacht Management, Inc., and McMichael Yacht Brokers, Ltd., Law No. L-81-166, Circuit Court of the City of Norfolk, Virginia.

This suit, filed January 30, 1981, involved allegations by Bay Harbor Brokerage of breach of a contractual relationship and tortious interference with a contractual relationship. Plaintiff allegedly located a yacht for defendant Dragas, but Dragas contacted the seller directly to purchase the yacht and refused to pay plaintiff a commission. I represented the plaintiff in its effort to recover a commission on the sale of the yacht.

There was no case in Virginia addressing the issue of when a boat broker was entitled to a commission. Virginia law on the subject of brokerage commissions involved primarily real estate sales. Therefore, it was necessary to analogize to the real estate area and argue the case as one of first impression in Virginia.

Extensive pretrial discovery was conducted, with discovery hearings before Judge Robert W. Stewart. The case was tried before Judge Morris B. Gutterman with a jury on September 22, 1982. The court directed verdict in favor of the defendants. An appeal to the Supreme Court of Virginia was noted on October 12, 1982, but the client was financially unable to pursue the appeal.

Co-counsel:	Guy R. Friddell, III, Esquire Willcox & Savage, P.C. 1800 Sovran Center Norfolk, Virginia 23510 (804) 628-5500
Counsel for George Dragas:	Hunter W. Sims, Jr., Esquire Kaufman & Canoles 2000 Sovran Center Norfolk, Virginia 23510 (804) 624-3000
Counsel for Intrepid Yacht Management, Inc. and E. L. Barclay:	George G. Joyner, III, Esquire 324 London Boulevard Portsmouth, Virginia 23704 (804) 393-4063
Counsel for McMichael Yacht Brokers, Ltd.:	John Tyler Stant, Esquire Clark & Stant, P.C. 211 Pembroke Three Building Pembroke Office Park Virginia Beach, Virginia 23462 (804) 499-8800

5. David R. Phelps v. Anheuser-Busch, Inc., and Hoffman Beverage Company, Law No. L-18512-M, Circuit Court of the City of Chesapeake, Virginia.

This suit arose from serious injuries to plaintiff's eye, resulting from an explosion of a beer bottle manufactured and distributed by the defendants. Plaintiff alleged negligence in the manufacture of a product, strict liability in tort, and liability for failure to warn of an inherently dangerous product. This case involved significant issues as to the requirements for pleading and proof of products liability claims under Virginia law.

I personally handled all aspects of the litigation for both defendants, from the inception of the case in January, 1983, until its conclusion in January, 1985. After conducting some pretrial discovery, a motion for partial summary judgment was filed on behalf of the defendants on the negligence and strict liability claims. A hearing on defendants' motion for summary judgment was conducted on November 1, 1983, before Judge William H. Hodges. Judge Hodges ruled in favor of the defendants on the motion, and plaintiff's counsel noted an appeal to the Supreme Court of Virginia, which was briefed by all parties. Also, a motion to dismiss the appeal as premature was filed on behalf of defendants in the

Virginia supreme court. Before the state supreme court could rule on the matter, the case was settled.

Co-counsel:	John M. Hollis, Esquire Willcox & Savage, P.C. 1800 Sovran Center Norfolk, Virginia 23510 (804) 628-5500
Corporate counsel:	Knut C. Heise, Esquire Associate General Counsel Anheuser-Busch Companies, Inc. Executive Offices One Busch Place St. Louis, Missouri 63118 (314) 577-2734 or (314) 577-2000
Counsel for plaintiff:	H. K. Reveley, Jr., Esquire Post Office Box 1352 Suite 2-A 1324 North Battlefield Boulevard Chesapeake, Virginia 23320 (804) 547-4343

6. In the Matter of the Extradition of Donovan Anthony Gordon, a/k/a Anthony Donovan Gordon, a fugitive from Jamaica, Mag. No. 85-46-S, United States District Court, Eastern District of Virginia, Norfolk Division.

This extradition proceeding was initiated by the United States on behalf of the government of Jamaica pursuant to 18 U.S.C. §§ 3181-3195, seeking extradition of Donovan Gordon from the United States to Jamaica. An extradition hearing was conducted by me on November 25, 26, and 27, 1985. Based upon the evidence submitted, I did not find probable cause to believe that Donovan Gordon committed murder as charged in Jamaica. Therefore, I declined to certify extradition to the Secretary of State pursuant to 18 U.S.C. § 3184 and ordered that Donovan Gordon be released from custody back to active duty with the United States Navy. I was the presiding judge for the entire matter. Significant legal questions regarding extradition law were raised during the course of the three-day extradition hearing. This is the only extradition proceeding on recent record with our court.

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7. James R. Harris, Selwyn L. Gills, Elbert F. Hill, Steve C. White v. Norfolk and Western Railway Company, Civil Action Nos. 87-243-N, 87-245-N, 87-249-N, 87-250-N, United States District Court, Eastern District of Virginia, Norfolk Division.

These suits, which were consolidated for trial, involved individual claims against the defendant railway company for environmental exposures incident to employment, allegedly resulting in lung, other respiratory, and psychological injuries. I tried the case with a jury for eight days, on May 3, 4, 5, 6, 9, 10, 11, 12, 1988.

The trial involved myriad legal issues, from jury selection through instructions, as well as a full range of evidentiary rulings attendant to a complicated civil jury trial. The jury returned a verdict for the defendant in three of the cases and for the plaintiff in one case. All plaintiffs filed motions for judgment notwithstanding the verdict or in the alternative for a new trial, which were heard and denied by me on July 11, 1988. The cases were not appealed.

Counsel for Plaintiff, James R. Harris:	Eddie W. Wilson, Esquire John W. Hall, Esquire 2200 Colonial Avenue Suite 12-B Post Office Box 11168 Norfolk, Virginia 23517 (804) 625-1277
Counsel for Plaintiffs, Selwyn L. Gills, Elbert F. Hill, Steve C. White:	Gary C. Byler, Esquire 505 South Independence Blvd. Suite 212 Virginia Beach, Virginia 23452 (804) 490-8094
	John Paul Woodley, Jr., Esquire Woodley & Simon The Virginia Building 1 North Fifth Street, Suite 301 Richmond, Virginia 23219 (804) 783-8282
Counsel for Defendant:	William T. Prince, Esquire M. Wayne Ringer, Esquire Williams, Worrell, Kelly & Greer 600 Crestar Bank Building Post Office Box 3416 Norfolk, Virginia 23514-3416 (804) 624-2600

8. Inter-State Assurance Company v. May Grace Condon, Civil Action No. 86-599-N, United States District Court, Eastern District of Virginia, Norfolk Division.

Plaintiff filed a declaratory judgment action under diversity jurisdiction for determination of its liability to pay Two Hundred Thousand Dollars ($200,000.00) on a term life insurance policy issued by it on defendant's husband. The case involved technical legal interpretations of certain provisions of the life insurance policy, namely when the policy took effect, whether from the date of delivery or from the effective date of the policy. The case involved current application of a 1941 Fourth Circuit case.

An evidentiary hearing was held before me on February 2, 1987, with oral argument on March 2, 1987. My decision in favor of the plaintiff was appealed to United States District Judge J. Calvitt Clarke, Jr., who upheld my opinion by order dated October 29, 1987, and then to the United States Court of Appeals for the Fourth Circuit, which upheld my opinion in an unpublished slip opinion, No. 87-3895, on June 20, 1988.

Counsel for Plaintiff: Peter C. Manson, Jr., Esquire
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Counsel for Defendant: Kenneth V. Geroe, Esquire
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9. Julius Cornell Pittman v. Edward W. Murray, Director of the Virgina Department of Corrections, Civil Action No. 86-307-N, United States District Court, Eastern District of Virginia, Norfolk Division.

This petition for a writ of habeas corpus under 28 U.S.C. § 2254 was referred to me for full review and all proceedings. The petitioner had pleaded guilty to and had been convicted of murder, robbery, burglary, and abduction in the Circuit Court of the City of Norfolk, Virginia, on March 2, 1982. He was sentenced to serve life plus seventy (70) years for these convictions. After a direct appeal and habeas corpus review in the state courts, he filed a federal habeas corpus petition on May 9, 1986, challenging his convictions on the grounds that the trial judge failed to inquire adequately into the basis of petitioner's waiver of his constitutional rights before accepting his guilty pleas, and that he was denied the effective assistance of counsel by his trial counsel's failure to reveal to the trial court the plea agreement reached with the prosecution, which agreement induced his guilty pleas. I held a plenary hearing in the matter to determine factually whether a plea agreement existed in petitioner's case and, if so, the terms of such agreement. The hearing was held on May 13, 1987, at which petitioner appeared with counsel. By opinion dated July 31, 1987, I recommended that the petition be dismissed.

This case involved significant constitutional issues relating to whether petitioner had satisfied the "cause and prejudice" requirements of Wainwright v. Sykes, 433 U.S. 72 (1977), and Murray v. Carrier, 477 U.S. 478 (1986), and issues of effective assistance of counsel in criminal cases under Strickland v. Washington, 466 U.S. 668 (1984). Moreover, under Virginia law petitioner was facing life in prison without the possibility of parole.

My recommendation was adopted by United States District Judge J. Calvitt Clarke, Jr., by final order of September 1, 1987, and an appeal was taken to the United States Court of Appeals for the Fourth Circuit on September 25, 1987. The Fourth Circuit affirmed the dismissal of the petition in an unpublished opinion, No. 87-7332, on December 21, 1988.

Counsel for Petitioner: John F. McGarvey, Esquire
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10. In Re Asbestos Cases, C/P 77-1, United States District Court, Eastern District of Virginia, Norfolk and Newport News Divisions.

This court has had and continues to have hundreds of asbestos cases pending before it. I have played a significant and active role in these cases, beginning in November, 1986, when I became a settlement judge for the cases. I conducted monthly settlement conferences until October, 1988, during which time only a very few cases were not settled, thereby greatly relieving the court's docket. In October, 1988, I was placed on a rotation with the United States District Judges to serve as a trial judge for the cases. The asbestos cases represent significant litigation in our court.

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19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

I. In addition to the cases listed in response to question 18 above, when I was an attorney at Willcox & Savage, P.C., I was on the trial/litigation team for four complex cases which deserve mention, as follows:

1. Wilder Enterprises, Inc. v. Allied Artists Pictures Corporation, American International Pictures, Inc., Avco Embassy Pictures Corporation, Buena Vista Distribution Company, Inc., Columbia Pictures Industries, Inc., Paramount Pictures Corporation, Twentieth Century Fox Film Corporation, United Artists Corporation, Universal Film Exchanges, Inc., Warner Brothers Distributing Corporation, ABC Southeastern Theatres, Inc., General Cinema Corporation of Virginia, Inc., American Multi-Cinema, Inc., Metro-Goldwyn Mayer, Inc., and General Cinema Corporation, Civil Action No. 77-637-N (E.D. Va. Mar. 6, 1979), aff'd in part, vacated in part, and remanded, 632 F.2d 1135 (4th Cir. 1980).

This anti-trust suit was filed on October 12, 1977, alleging that the defendants entered into an agreement to allocate first-run films in violation of the Sherman Act, thereby depriving the plaintiff from obtaining first-run films and causing its theaters to close. Plaintiff, an independent film exhibitor, claimed that defendants participated in a "split" arrangement, whereby the national film exhibitors allegedly allocated among themselves the right to bid or negotiate for first-run films offered by the national distributors. The suit was tried in the United States District Court for the Eastern District of Virginia, Norfolk Division, from January 29 through February 6, 1979, with a jury. The court directed a verdict as to all defendants, and plaintiff appealed to the United States Court of Appeals for the Fourth Circuit. On October 3, 1980, the appellate court affirmed in part, vacated in part, and remanded the case to the district court for retrial.

My law firm, Willcox & Savage, P.C., represented defendant General Cinema Corporation of Virginia and General Cinema Corporation (hereinafter referred to as "General Cinema"). I became a member of the trial team for this case in January, 1981, after it had been remanded by the appellate court. While there were a number of attorneys representing the various defendants, I handled the case with Thomas G. Johnson, Jr., Esquire, of Willcox & Savage, on behalf of General Cinema. I was in charge of conducting all discovery on behalf of General Cinema, including depositions, interrogatories, and requests for production of documents, together with all motions and hearings in conjunction with this discovery. I was also in charge of the trial preparation and legal research for the retrial on behalf of General Cinema, and I was the day-to-day contact from the firm with the client. The case was settled just prior to the scheduled retrial in September, 1981, with the final stipulation and order of dismissal being entered by the court on October 6, 1981.

2. Blue Cross of Virginia and Blue Shield of Virginia v. Human Resource Institute of Norfolk, Inc., Fathy A.

Abdou, M.D., and Dietrich W. Heyder, Law Nos. L-78-36 and L-78-37; and Human Resource Institute of Virginia, Inc., Fathy A. Abdou, M.D., and Dietrich W. Heyder v. Blue Cross of Virginia and Blue Shield of Virginia, Law Nos. L-79-2000 and L-80-2256, Circuit Court of the City of Norfolk, Virginia.

In this suit against two doctors and the institute at which they practiced, Blue Cross/Blue Shield sought to recover payments it claimed to have made for treatment that was never rendered, for bills based upon claimed periods of time substantially in excess of the time actually spent with the patient, and for care which was not medically necessary and/or which did not constitute treatment of the patient's illness. The main suits were filed in 1978, with countersuits being filed in 1979 and 1980. The cases were consolidated for discovery and trial, and they were all settled in 1985. I entered the cases on behalf of Blue Cross of Virginia and Blue Shield of Virginia as part of the trial team in November, 1980, and assisted with the discovery and legal research. I was specifically in charge of the document production from the institute and the doctors and the review of those documents for trial preparation, as well as conducting discovery depositions. The case involved complicated issues of medical practices for billings and payments, and I was able to combine my legal background with my experience as a professional health planner in preparing the case.

3. John S. Coleman and Broadcast Weather Enterprises, Inc. v. Landmark Communications, Inc. and the Weather Channel, Inc., Civil Action No. 1833386, Superior Court of Cobb County, Georgia.

John S. Coleman and Broadcast Weather Enterprises, Inc., a corporation wholly-owned by Mr. Coleman, filed suit on June 27, 1983, in state court in Georgia, claiming that the defendants were violating their agreement with plaintiffs in the operation of the Weather Channel and in regard to certain financial and employment agreements, and further that the defendant, Landmark Communications, was acting in a manner so as to remove Mr. Coleman from the Weather Channel's Board of Directors and cause a forfeiture of his stock interest in the Weather Channel. Plaintiffs sought a temporary and a permanent injunction against defendants to prevent the changes in the operation and financial arrangements of the Weather Channel. I was on the trial team from Willcox & Savage, P.C., representing the defendants in this matter.

The motion for a temporary restraining order was heard in the Georgia state court on June 28, 1983, and the court issued a restraining order against defendants. Accelerated discovery was conducted and an order of dismissal with prejudice and stipulation were entered by the court on July 18, 1983. Mr. Coleman resigned from the Weather Channel and Landmark Communications assumed full control of the operation.

This case, while short in duration, was a complex matter which moved at an extremely fast pace due to the irreparable harm that could have resulted in the operation of the Weather Channel. The trial team from Willcox & Savage consisted of Conrad M. Shumadine, Thomas G. Johnson, Jr., and myself. Defendants also had counsel in Georgia to work with the Willcox & Savage trial team.

4. *Norfolk Psychiatric Center, Inc. and Portsmouth Psychiatric Center, Inc. v. Center Psychiatrists, Ltd., Center Psychiatrists, Ronald I. Dozoretz, M.D., Joseph Allen, M.D., Vernon Barksdale, M.D., Magnus Lakovics, M.D., Gregory Montoya, M.D., Don Rife, M.D., Neil Price, M.D., Michael Bohan, M.D., Joseph Corbo, M.D., Daniel Kay, M.D., Roberto Luna, M.D., Paul Mansheim, M.D., Joginder Pal, M.D., Scott Snyder, M.D., Dennis Spiers, M.D., Milton Waring, M.D., Jessie Woodhouse, M.D., Michael Garriott, and Donald Christensen, Ph.D.*, Chancery No. C84-175, Circuit Court of the City of Norfolk, Virginia.

On February 3, 1984, plaintiffs filed an equity action claiming violation of a professional services agreement with defendants. The case involved complex issues of professional financial arrangements and medical employment agreements. A key issue was whether the medical staffs at plaintiffs' facilities could be opened to practitioners other than defendants, who opposed the opening of the medical staffs at these hospitals as contrary to their professional services agreement. I was on the trial team from Willcox & Savage, P.C., that represented the defendants.

Defendants filed a Cross-Bill for injunction on February 6, 1984. A hearing on a motion for temporary injunction was conducted and the injunction was denied on March 13, 1984. Defendants then filed a Demurrer to the Bill of Complaint, which was fully briefed and heard on April 16, 1984. The Demurrer was partially sustained and partially overruled. I then drafted and filed on April 30, 1984, an Answer to the original Bill of Complaint, a Cross-Bill, and a Third-Party Cross-Bill. Discovery was conducted and the case was settled by agreement dated September 1, 1984. Again, I was able to combine my expertise in both the legal and health planning areas in this case. Also, this was another complicated case that moved at a very fast pace due to the irreparable harm that might result to the parties involved.

II. As a United States Magistrate, in addition to my court duties, I have participated significantly in two areas of the legal profession. First, I have been a regular participant as a moot court judge or instructor in bar assocation and law school educational programs as follows: Region III Tournament of the National Trial Competition sponsored by the Young Lawyers Section of the Virginia State Bar, 20 teams from 11 law schools competed, Judge, February 12, 1989; Norfolk-Portsmouth Bar Association, Continuing Legal Education Program on Discovery in Federal and State Courts, Judge Panelist representing the local federal judges on a three-judge panel, January 26, 1989; Virginia Trial Lawyers Association, Intraschool Trial Advocacy Competition, Judge Panelist, January 14, 1989; Seminar for new lawyers being admitted to practice in federal court, presented by the Tidewater, Virginia Chapter of the Federal Bar Association, Lecturer, November 18, 1988; Virginia Law Women Panel Discussion, at the University of Virginia, Charlottesville, Virginia, Judge Panelist, April 21, 1988; Continuing Legal Education seminar entitled "Federal Court Civil Practice and Procedure," presented by the Committee on Continuing Legal Education of the Virginia Law Foundation, Lecturer, March 15, 1988, in Richmond, Virginia; March 23, 1988, in Norfolk, Virginia; and on videotape; American Bar Association National Appellate Advocacy Competition, in Williamsburg, Virginia, Judge, April 11, 1987; and since July, 1985, continuous service as a judge for various moot court competitions and trial and appellate advocacy programs at the Marshall-Wythe School of Law, College of William and Mary, Williamsburg, Virginia, as well as participation in the legal clerking program at the law school.

Second, one of the most significant legal activities that I have pursued as a United States Magistrate has been in the formation of an American Inn of Court in conjunction with the Marshall-Wythe School of Law, at the College of William and Mary. I was a member of the founding committee that organized our local Inn of Court, selected the members, and set it up. I have remained on the Executive Board and have served as a Master of the Bench and as Chancellor (Vice President) during its two years of operation, and I am slated to be President of the Inn next year. I am the only judge from our court in the Inn and represent our federal court in this capacity. The establishment of American Inns of Court is a new and important contribution to the legal profession. The goal of the Inns is to improve and promote excellence, professionalism, and the highest ethical standards in the legal advocacy before our courts. Our local Inn, the Walter E. Hoffman-Lawrence W. I'Anson American Inn of Court No. XXVII, has been an active, successful Inn thus far.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   None.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

   I would not hear any matter in which I had any potential conflict of interest. Our local practice prohibits judges from participating in any proceeding in which they have stock, other financial interest, or a familial relationship with one of the parties or in the matter in controversy, or in any matter which would constitute even the appearance of impropriety. This practice is in conformance with 28 U.S.C. § 455(a) and the Canons of the Code of Judicial Conduct approved by the Judicial Conference of the United States, both of which would clearly prohibit any such participation. As a United States Magistrate, I have always complied with this practice, the statute, and the Code of Judicial Conduct, and I would continue to do so in the future.

   Before becoming a United States Magistrate, I was an attorney with Willcox & Savage, P.C. However, I have severed all connections with my former law firm, and I do not now, nor would I in the future, hear any case which was at Willcox & Savage, P.C. while I was an attorney with the firm. Also, I hold stock in the Bank of Hampton Roads, Chesapeake, Virginia, through an Individual Retirement Account (IRA) account, and I would not hear any case involving that entity or any other entity with which I had a financial connection. Finally, I do not now, nor would I in the future, hear any case involving my husband (an attorney) or his law firm, Outland, Gray, O'Keefe & Hubbard. To my knowledge, I have no other potential conflicts of interest, and in any event, I have always abided by the ethical rules applicable to federal judges, as delineated above, and will continue to do so.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

   No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

   A completed Financial Disclosure Report for the period January 1, 1988, to August 1, 1989, is attached.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

   A completed Financial Net Worth Statement as of August 1, 1989, is attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   No.

AO 10
Rev. 1/89

FINANCIAL DISCLOSURE REPORT

Annual Report Due by May 15 from Judicial Officers and certain Judicial Employees (28 USCA App. I, §§ 301-09)

Person Reporting (Last name, first, middle initial) Smith, Rebecca B.	Court or Organization United States District Court Eastern District of Virginia	Date of Report August 8, 1989
Title Nominated for United States District Judge, Currently United States Magistrate	Date of XXX/Nomination/XXXXXXX (only if initial or final report) August 4, 1989	Reporting Period (Calendar year or inclusive dates) Jan. 1, 1988- Aug. 1, 1989
Home or office address Walter E. Hoffman United States Courthouse, Room 181 600 Granby Street, Norfolk, Virginia 23510		

IMPORTANT NOTES: *Please read the instructions accompanying this form. The report should include information pertaining to your spouse and dependent children, if any. Attach additional sheets if needed, identifying each attachment by showing your name, the date of the report, and the section(s) being completed.* **Complete all sections, checking the NONE box for each section where you have no reportable information.** *Compare and reconcile this report with last year's and list items in the same order as last year. Type or print clearly. Sign on last page.*

I. POSITIONS. (Reporting individual only; see pp. 15-17 of Instructions.)

☐ NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
Chancellor (Vice President)	Lawrence W. I'Anson-Walter E. Hoffman American Inn of Court, Chapter XXVII

II. AGREEMENTS. (Reporting individual only; see p. 17 of Instructions.)

DATE PARTIES AND TERMS

☒ NONE (No reportable agreements.)

III. NON-INVESTMENT INCOME. (Partial disclosure for spouse; see pp. 18-20 of Instructions.)

☐ NONE (No reportable non-investment income.)

	DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1		Attorney, partner in Outland, Gray, O'Keefe & Hubbard, Chesapeake, Virginia (S)	$
2			$
3			$
4			$
5			$

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting: Rebecca B. Smith

Date of Report: August 8, 1989

IV. REIMBURSEMENTS and GIFTS--transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children, see pp. 20-22 of Instructions.)

	SOURCE	DESCRIPTION
☒	NONE (No such reportable reimbursements or gifts)	
1		
2		
3		
4		
5		
6		
7		
8		

V. OTHER GIFTS.

(Includes those to spouse and dependent children; see pp. 20-22 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
☒	NONE (No such reportable gifts)		
1			$
2			$
3			$
4			$

VI. LIABILITIES.

(Includes those of spouse and dependent children; see pp. 22-24 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	NONE (No reportable liabilities)		
1	Heritage Savings & Loan Association, Richmond, Va. (J)	one-half mortgage on second home	J
2	Clarion Hotel Associates, Limited Partnership, New York, N.Y. (S)	note	J
3	Sovran Bank, N.A., Norfolk, Va. (S)	note	L
4	Tre-Suz-Ann Development Co., North, Va. (J)	one-half mortgage on lot	L
5	Bank of Hampton Roads, Chesapeake, Va. (J)	one-half mortgage on lot and construction loan	N
6			
7			

* VALUE CODES				
	J = $0 to $1,000	K = $1,001 to $5,000	L = $5,001 to $15,000	M = $15,001 to $50,000
	N = $50,001 to $100,000	O = $100,001 to $250,000	P = over $250,000	

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting: Rebecca B. Smith

Date of Report: August 8, 1989

VII. INVESTMENTS and TRUSTS--Income, value, transactions. (Includes those of spouse; partial disclosure for dependent children; see pp. 24-35 of Instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during period		C. Gross value at end of period		D. Transactions during period (Reporting individual and spouse)				
	Amt. Code[1] (A-H)	Type (e.g., div.)	Value Code[2] (J-P)	Value Method Code[3] (Q-W)	Type (e.g., sold)	If not exempt from disclosure: Date: Month-Day	Value Code[2] (J-P)	Gain Code[1] (A-H)	Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1 Checking Account, Crestar Bank, Chesapeake, Va. (J)	B	interest	L	T					
2 1/2 interest, house & lot Pine Beach, Deltaville, Va.	G	sale proceeds						E	
3 IRA-Life Federal Savings & Loan Assn., Norfolk, Va.	C	interest	L	T					
4 IRA-Life Federal Savings & Loan Assn., Norfolk, Va. (S)	C	interest	M	T					
5 IRA-New England Life Pension Properties III & IV, with State Street Bank & Trust Co. Boston, Mass. (S)	B	interest & div.	L	T					
6 Money Market Account, Crestar Bank, Chesapeake, Va. (J)	E	interest	N	T					
7 IRA-Commerce Bank, Virginia Beach, Va., holding 920 shares Bank of Hampton Roads, Chesapeake, Va.	B	interest	L	T					
8 IRA-Kidder, Peabody & Co., Webster Fund, New York, N.Y.	B	interest	K	T					
9 IRA-Kidder, Peabody & Co., Webster Fund, New York, N.Y.(S)	B	interest	K	T					
10 1/2 lot #25, Chick Cove, Deltaville, Va. (J)	A		L	R					
11 1/2 lot #1, Mill Creek Harbor Deltaville, Va., house under construction (J)	A		O	R					
15									
16									
17									
18									
19									
20									

1 Income/Gain Codes	A = exempt ($0 to $100) E = $5,001 to $15,000	B = $101 to $1,000 F = $15,001 to $50,000	C = $1,001 to $2,500 G = $50,001 to $100,000	D = $2,501 to $5,000 H = over $100,000
2 Value Codes	J = exempt ($0 to $1,000) N = $50,001 to $100,000	K = $1,001 to $5,000 O = $100,001 to $250,000	L = $5,001 to $15,000 P = over $250,000	M = $15,001 to $50,000
3 Value Method Codes	Q = Appraisal U = Book value	R = Cost (real estate only) V = Other	S = Assessed value W = Estimated	T = Cash/market

FINANCIAL DISCLOSURE REPORT (cont'd)	Name of Person Reporting	Date of Report
	Rebecca B. Smith	August 8, 1989

VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate section of Report.)

☒ **Check to affirm that differences in investments from those reported in prior year are exempt from disclosure.**

IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

Signature Rebecca B. Smith

Date August 8, 1989

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (28 U.S.C.A. APP. I, § 304, AND 18 U.S.C. § 1001.)

FILING INSTRUCTIONS:

1. Mail signed original and 3 additional copies to:

Judicial Ethics Committee
Administrative Office of the
United States Courts
Washington, DC 20544

2. Deliver one copy to the Clerk of the Court on which you sit or serve. (Judicial employees not associated with a specific court, such as employees of the Administrative Office and the Federal Judicial Center, need not file a copy with any court.)

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		
Cash on hand and in banks	65	948
U.S. Government securities—add schedule		
Listed securities—add schedule		
Unlisted securities—add schedule		
Accounts and notes receivable:		
Due from relatives and friends	1	300
Due from others		
Doubtful		
Real estate owned—add schedule	419	043
Real estate mortgages receivable		
Autos and other personal property	39	500
Cash value—life insurance	19	039
Other assets—itemize:		
Qualified Retirement Arrangements	109	039
Partnership Interest in 1 Unit of Clarion Hotel Associates Limited Partnership		0
Total assets	653	869

LIABILITIES		
Notes payable to banks—secured		
Notes payable to banks—unsecured	10	552
Notes payable to relatives		
Notes payable to others	5	179
Accounts and bills due		
Unpaid income tax		
Other unpaid tax and interest		
Real estate mortgages payable—add schedule	179	675
Chattel mortgages and other liens payable		
Other debts—itemize:		
Total liabilities	195	446
Net worth	458	423
Total liabilities and net worth	653	869

CONTINGENT LIABILITIES	
As endorser, comaker or guarantor	None
On leases or contracts	None
Legal Claims	None
Provision for Federal Income Tax	None
Other special debt	None

GENERAL INFORMATION	
Are any assets pledged? (Add schedule.)	No
Are you defendant in any suits or legal actions?	No
Have you ever taken bankruptcy?	No

REAL ESTATE

Property	Value	Debt	
703 Westover Avenue Norfolk, VA	$300,000 (estimate)	$98,800	to Crestar Bank, Chesapeake, VA
Lot 1, Mill Creek Harbor Deltaville, VA (1/2 interest, house under construction)	72,500 (cost)	74,085	to Bank of Hampton Roads Chesapeake, VA
1/2 construction to date on Mill Creek Harbor property	37,093 (cost)		
Lot 25, Chick Cove Deltaville, VA (1/2 interest)	9,450 (cost)	6,790	to Tre-Suz-Ann Development Co., North, VA
TOTALS	$419,043	$179,675	

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have not practiced law since I became a United States Magistrate on July 1, 1985. While in practice, I provided legal services for disadvantaged persons at no fee or at a substantially reduced fee in a number of cases, primarily in the domestic relations/child custody and estate areas. These cases were referred to me by office staff, other clients, friends, or relatives. While there was no formal pro bono program at my firm, the policy of accepting non-remuneration cases as part of the lawyer's responsibility to the community was emphasized and encouraged. I specifically recall at least six significant matters involving a few hundred legal hours. Two of the cases involved contested child custody and visitation rights in which I represented mothers without financial resources to retain attorneys; one case involved a divorce for a handicapped individual; one case involved release of a power of attorney for an elderly, allegedly incompetent person; and two cases involved complicated claims on small estates which would have been dissipated by legal fees, one case being for a large, disadvantaged minority family, and another for an elderly person in need of constant medical care. These cases were all handled for costs and, in some instances, a nominal fee which did not come close to covering my usual charge for the amount of work involved.

In addition, I actively participated in public education programs as an attorney, by speaking at local high schools on the practice of law and on our judicial and court system and by participating for three years (1981, 1982, and 1983) in the Norfolk-Portsmouth Bar Association's Mock Trial Program for local public high school students. Also, I participated in Law Week activities each year of my practice and served in the public law information booths. I was on the Law Day Committee of the Norfolk-Portsmouth Bar Association for 1984 and 1985. The ultimate purpose of all of these activities was to encourage a public belief in and support of our legal system and equal justice under the law.

As a United States Magistrate, I am in court almost on a daily basis. Many individuals appear before me unrepresented by counsel and without the resources to retain attorneys. They are either not entitled to appointment of counsel under the law, or they choose to be unrepresented. In all cases, regardless of whether a person is represented by counsel and regardless of a person's station or means in society, it is my duty as a judge to listen to the parties and respond with patience, to be fair, to follow the law, and to treat everyone equally. In so doing, I endeavor to impress our system of equal justice under the law upon the litigants. For many of these individuals, the court appearance is their first, and maybe only, exposure to our legal/judicial system. It is very important at this broad level to ensure confidence in our legal/judicial system. Also, as a United States Magistrate, I have continued to participate in public education programs as much as possible. I have spoken at a number of schools and to a number of public groups about our legal system and the role of the United States Magistrate in the federal judicial system.

As an active member of the Junior League of Norfolk-Virginia Beach from 1980 to 1987, I did extensive volunteer work in the community, giving approximately two hundred hours per year of my time. I served as a volunteer at the Norfolk Public Library to set up displays in the children's section and to read to children during storyhour. I served on the Community Awareness Board for two years, to identify areas of community needs and projects for the Junior League's resources of both time and money. Some of the projects during this time involved the local hospice, the local food bank, shows using handicapped puppets in the local schools to increase sensitivity to handicapped persons, and the battered spouse's and abused children's shelter.

Finally, I am currently a volunteer at the St. Mary's Soup Kitchen in Norfolk, Virginia, where I serve lunch to the homeless and clean on the second Monday of each month. I have served in this capacity since 1988.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No.

NOTE: My husband was formerly a member of Norfolk Yacht and Country Club. In the spring and summer of 1988, questions were raised about the club's membership policy. While the club had no formal or written discriminatory membership policy or bylaw, some minorities were not represented in the membership. My husband made inquiry into the membership admission practices of the club and pursued the possibility of changing some of the practices and proposing some minority members. He concluded that, while the practices had been changed in some respects, they would not be changed in their entirety at that time, and he resigned.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Yes. The Virginia State Bar, the membership of which consists of all attorneys licensed to practice law in Virginia, and other voluntary state bar associations recommend candidates, when requested, for state and federal judgeships. These endorsements are submitted to the appropriate legislators. I received the following bar association endorsements in connection with this judgeship:

Virginia State Bar - Only candidate endorsed for the vacancy on the United States District Court, Eastern District of Virginia.

Virginia Trial Lawyers Association - Only candidate endorsed for this federal court vacancy.

Virginia Women Attorneys Association - Endorsed as the "highly qualified" candidate for this federal court vacancy.

Also, the Virginia Bar Association and the Virginia Women Attorneys Association endorsed me for the recent (December, 1988) vacancy on the Supreme Court of Virginia.

I spoke with Senator John W. Warner in person on two occasions and with his office by telephone on a number of occasions. I submitted my resume and credentials to Senator Warner. The bar associations listed above submitted their endorsements to Senator Warner, and a number of individuals contacted Senator Warner on my behalf. In March, 1989, Senator Warner telephoned me to inform that he was submitting my name to the United States Department of Justice for the vacancy on the United States District Court for the Eastern District of Virginia. In April, 1989, I was personally interviewed at the Justice Department. I then completed various questionnaires for submission to the Justice Department, the Federal Bureau of Investigation, the Internal Revenue Service, and the American Bar Association. I was personally interviewed by agents of the Federal Bureau of Investigation and by a representative of the American Bar Association. The President telephoned me in July, 1989, to inform that he would be nominating me for the judicial office of United States District Judge, Eastern District of Virginia, and he submitted the nomination to the United States Senate on August 4, 1989. I then completed a Financial Disclosure Report for submission to the Judicial Ethics Committee of the Administrative Office of the United States Courts and this questionnaire for submission to the Senate Committee on the Judiciary.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

"Judicial activism" has become a popular term to describe actions of the judiciary which reach past the case and controversy before the court by molding broad solutions having effects on society beyond the legal and factual issues of a particular case, and which impose a particular judge's personal views and will on the case. Judicial activists may be labeled liberal or conservative, depending upon the views and wills imposed on the case. The public, the other two branches of government, and commentators have been critical of the judiciary for its activism in certain areas, resulting in the imposition of broad, affirmative duties on government and society.

Our Founding Fathers and our Constitution established three equal branches of government, with separate and distinct powers and functions. The judiciary's role is to interpret the law and the Constitution and to decide only cases and controversies brought to it by an aggrieved party. My impression from experience and the literature is that some individual judges have been willing to act beyond the case before the court in an effort to correct a broader problem perceived by that individual judge. In these cases, the criticism is justified and regrettably causes mistrust of the judiciary by the public, the other two branches of government, and the commentators.

However, some of the criticism should be shared by our society itself and not be focused entirely on the judiciary. Litigants have increasingly presented cases involving broad societal matters, to which the courts respond in an effort to resolve the case before it, for example in the products liability area. In addition, the creation and expansion of class action suits present the potential for a perception of "judicial activism" because the resolution of the case before the court involves a large number of parties who, while sharing certain characteristics of the class, broaden the overall issues and resolution involved. Even in these potentially broad areas of litigation, under the law and the doctrine of res judicata, a court's decision can only bind the parties before it. The difficulty often occurs when the court's solution to the particular grievance before it is then applied as a broader, societal problem-solving tool.

In conclusion, I feel it is inappropriate for a judge to reach past the specific facts and legal issues in the case actually before the court and to fashion a broad remedy that ursurps the functions of the legislative or executive branches; to impose his or her personal views to remedy a perceived societal problem; or to render any type of advisory opinion. The trial judge in his or her decision is limited both by the facts of the case itself and the law as settled and interpreted by the United States Supreme Court and the federal appellate courts. The basis of a legal ruling should be the underlying principles of law, which are applied by a reasoned progression from the Constitution, statutes, and/or the common law through cases of a similar nature to the particular case being considered. It is inappropriate for a judge to reshape these principles to fit his or her individual, willful preference in the case at hand. A trial judge should be mindful of these limitations and not go past the judiciary's role to interpret and apply the law in a particular case by legislating or making the law in a broad context. Moreover, court's should not loosen jurisdictional requirements, such as standing and ripeness, to hear cases which they otherwise could not. Finally, whenever possible, courts should endeavor to conclude a case without becoming an administrator with continuing oversight functions in the matter. Judges who do not heed these restraints become "judicial activists" contrary to the mandates of the Constitution.

AMERICAN BAR ASSOCIATION
Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004

[illegible]

CONFIDENTIAL

August 28, 1989

Hon. Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate
SR 221
Washington, D.C. 20510-0802

RE: HON. REBECCA BEACH SMITH
United States District Court
for the Eastern District of Virginia

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Magistrate Rebecca Beach Smith for appointment as Judge of the United States District Court for the Eastern District of Virginia.

Our Committee is unanimously of the opinion that Magistrate Smith is Qualified for this appointment.

A copy of this letter has been sent to her for her information.

Sincerely,

Ralph Lancaster
Ralph I. Lancaster, Jr.
Chairperson

RIL/am

cc: All Committee Members
Hon. Rebecca Beach Smith
Robert Raven, Esq.
Barbara Drake, Esq.

MARVIN J. GARBIS

Birth:	June 14, 1936	Baltimore, Maryland
Legal Residence:	Maryland	
Marital Status:	Married	Phyllis L. Zaroff Garbis 3 children
Education:	1953 - 1958	Johns Hopkins University B.E.S. degree
	1958 - 1961	Harvard Law School J.D. degree
	1961 - 1962	Georgetown Law School LL.M. degree
Bar:	1962	Maryland
Experience:	1961 - 1962	E. Barrett Prettyman Fellowship Program, Fellow
	1962	Project on Law and Psychiatry Assistant to the Director
	1963 - 1967	U.S. Department of Justice Tax Division Attorney
	1967 - 1971	Sole practitioner
	1971 - 1986	Garbis, Marvel & Junghans, P.A. (formerly Garbis & Schwait) Partner
	1986 - 1988	Melnicove, Kaufman, Weiner, Smouse & Garbis, P.A. Partner
	1988 - pres	Johnson & Gibbs Partner
Office:	1001 Pennsylvania Avenue, N.W. Washinton, DC 20004 202 682-4510	
Home:	Baltimore, Maryland 21209	

To be United States District Judge for the District of Maryland

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Marvin Joseph Garbis

2. **Address**: List current place of residence and office address(es).

Residence:
Baltimore, Maryland 21209

Office:
Johnson & Gibbs
1001 Pennsylvania Avenue, N.W.
Suite 745
Washington, D.C. 20004

3. Date and place of birth:

June 14, 1936
Baltimore, Maryland

4. Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married, August 27, 1961
Phyllis Lorraine Garbis (Nee Zaroff)

Occupation: Floral designer

Employer:
Barbara Taylor Flowers
2222 Crest Road
Baltimore, Maryland 21209
(301) 542-2020
Part-time employee
(May, 1988 - Present)

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

College:

Johns Hopkins University (1953-1958) B.E.S. (1958)

Law Schools:

Harvard Law School (1958-1961) J.D. (1961)

Georgetown Law School (1961-1962) LL.M. (1962)

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Full Time Professional Employment:

1961-1962	E. Barrett Prettyman Fellowship Program Georgetown Law Center 600 New Jersey Avenue, N.W. Washington, D.C. 20001 (202) 624-8000
1962	Project on Law and Psychiatry Then, Suite 605 2000 P Street, N.W. Washington, D.C. (No longer exists)
1963-1967	Government Service Tax Division (Criminal and Civil Trial Sections) United States Department of Justice Washington, D.C. 20530
1967-1971	Sole practioner Suite 1718 Munsey Building Baltimore, Maryland 21202

1971-1986	Member of law firm Garbis, Marvel & Junghans, P.A. (Originally Garbis and Schwait) 2015 Greenberry Road Baltimore, Maryland 21209 (No longer active)
1986-1988	Member of law firm Melnicove, Kaufman, Weiner, Smouse & Garbis, P.A. 100 S. Charles Street Baltimore, Maryland 21201
1988-	Member of law firm Johnson & Gibbs (formerly Johnson & Swanson) 1001 Pennsylvania Avenue, N.W. Suite 745 Washington, D.C. 20004

Employment Prior to Law School Graduation:

1958-1960 (Summers only)	Western Electric Corporation Patent law clerk and patent researcher in Baltimore plant and Washington patent office.
1959-1961 (Part time)	Scholastic Jewelers (Boston, Massachusetts) I was the student representative for this company taking orders for law school rings.

Other:

1987 -	GMJ Writing Group This is a partnership of the co-authors of two books which exists only to collect royalties paid by the publishers and divide the royalties among the co-authors. A former partnership named "Garbis and Schwait Authorship Company" served the same function during the years 1975 -1985.
1973-82	Garbis and Schwait Realty Company This was a partnership with another member of the same law firm which existed only to hold an interest in a real estate venture during the period 1973-1982.

Adjunct Faculty:

1977-1985[1], 1988 -	University of Maryland Law School. Taught the course on federal tax procedures with others.
1978-1980	Georgetown University Law School Masters in Tax Program Taught criminal portion of course on tax procedures in 2 or 3 of these years with adjunct faculty member Michael Abrutyn.
1982-1984, 1988-	University of Baltimore Law School Taught a course on federal tax procedures with others.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None.

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[1] I taught in some of these years but probably not in each year.

8. __Honors and Awards__: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

American Law Institute - Elected Member

American College of Tax Counsel - Elected Fellow

Johns Hopkins University (1953-1958) B. E. S.

Westinghouse Scholarship Program (First three years night school while employed at Westinghouse).
President of Eta Kappa Nu, Electrical Engineering Honor Society. Member, Tau Beta Pi, Engineering Honor Society.

Harvard Law School (1958-1961) J. D.

Harvard Corporation Scholarship.
Student American Bar Association, National Vice President (First Circuit).

Georgetown Law School (1961-1962) LL. M.

E. Barrett Prettyman Fellowship Program in Trial Advocacy.

9. __Bar Associations__: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

__American Bar Association__

Council, Section of Taxation (1986-1989)
Chairman, Court Procedure Committee, Section of Taxation (1977-79)
Chairman, Subcommittee on Special Investigative Techniques, Section of Taxation (Approx. 1983-86)
Section of Litigation
Criminal Justice Section

Federal Bar Association

President, Baltimore Chapter (1972-1973)
Chairman, Board of Governors (1971-72)
Chairman, Judicial Portrait Committee for United States District Court (1983 -   )

American Law Institute-American Bar Association

Course Advisory Board, Committee on Continuing Legal Education (1985 -   )

M.I.C.P.E.L. (Maryland Institute for Continuing Professional Education of Lawyers)

President	(1980 - 1982)
Vice President	(1978 - 1980)
Secretary	(1976 - 1978)
Trustee	(1983 -)

Judicial Institute of Maryland

Board of Directors (1982 - 1988)

Maryland State Bar Association

Board of Governors (1971 - 1972)
Chairman, Continuing Legal Education Committee (1973 - 1980)

Bar Association of Baltimore City

Executive Council (1973-1976)
Treasurer (1976-1977)

Federal Circuit Bar Association

Board of Directors (1985 - 1988)

New York University, Federal Tax Institute

Advisory Board (1988 -   )

Maryland Criminal Defense Attorneys' Association

No office held.

J. Edgar Murdock American Inn of Court

No office held.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies.

None.

Please list all other organizations to which you belong.

The Carlton Club (Sherlock Holmes Society)

Har Sinai Temple

Mt. Washington Improvement Association

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of the United States (1967)

U.S. Court of Appeals for the Fourth Circuit (1974)

U.S. Court of Appeals for the Federal Circuit (1985)

U.S. Court of Appeals for the District of Columbia Circuit (1961)

U.S. Tax Court (1966)

U.S. Claims Court (1982)

U.S. Court of Claims (1966)

U.S. District Court for the District of Maryland (1967)

U.S. District Court for the District of Columbia (1962)

U.S. Court of Military Appeals (1962)

Court of Appeals of Maryland (1962)

Supreme Bench of Baltimore City (1962)

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Books:

Federal Tax Litigation, Garbis, Junghans & Struntz (Warren, Gorham & Lamont, Boston, 1985 & supps.) A treatise on civil tax litigation in the U.S. district courts, Claims Court and Tax Court.

Tax Procedure and Tax Fraud, (Cases and Materials), Garbis, Struntz & Rubin (West Publ. Co., St. Paul, 2nd ed. 1987, 1st ed. 1982) Casebook used in law school and post-graduate courses at more than 30 universities.

Tax Court Practice, Garbis and Schwait (Warren, Gorham & Lamont, Boston, 1974, supps. to 1983)

Tax Refund Litigation, Garbis and Schwait (ALI/ABA, Philadelphia, 1971, 1977 Supp.)

Procedures in Federal Tax Controversies. Garbis and Frome (Ronald Press, N.Y. 1968)

Articles in Professional Periodicals:

Judicial Awards in Tax Litigation; Court Costs and Fees to Taxpayers, Damages to the Government, 46 N.Y.U. Institute on Federal Taxation 48-1 (1988)

The Titled Table: Penalties and Interest in Federal Tax Deficiencies, 7 Virginia Tax Review 485 (1988) (with M. L. Fisher)

Thorns Among the Roses - The Problems of the Investor in an "Abusive" Tax Shelter, 44 N.Y.U. Institute on Federal Taxation 5.00 (with S. Struntz) (1986)

Implications of the Supreme Court's holding of no accountant's privilege in Arthur Young, 60 Journal of Taxation No. 6, 343 (1984) (with R. B. Rubin).

Shark Repellent for the Estate Fiduciary - Avoiding Personal Responsibilities for Tax Liabilities, 16 Univ. of Miami Institute on Estate Planning 8 (1982)

Book review of 'IRS Practice and Procedure' by Saltzman: A new and valuable asset for practitioners, 56 Journal of Taxation No. 3, 169 (1982).

The Second Circuit's Arthur Young decision: A privilege for tax accrual workpapers, 57 Journal of Taxation No. 2, 66 (1982) (with S. C. Struntz).

Defenses and Discovery in Tax Fraud Investigations, 10 Cumberland Law Review 655 (1980).

Proposals for a New National Court of Tax Appeals and The Role in Tax Litigation of the Court of Claims: a panel, 33 Tax Lawyer (1979) (with Redman, Ferguson, Kurtz, Feinberg).

New Rules Regulating Income Tax Return Preparers Affect All Tax Practitioners, 46 J. of Taxation 152 (1977).

Choosing The Best Tax Forum: The factors to be considered, 9 The Practical Accountant No. 1, 56 (1976) (with A. L. Schwait).

Supreme Court's Decision in Fisher Requires Greater Alertness in Handling Tax Fraud Cases, 9 The Practical Accountant No. 4, 35 (1976) (with L. P. Marvel).

When The Business Taxpayer Cannot Pay Tax Debts - A Time to Negotiate, 33 N.Y.U. Institute on Federal Taxation 1507 (1975).

What to Do-And What Not To Do-If You're Served with an IRS Summons, 6 The Practical Accountant No. 1, 28 (1973) (with A. L. Schwait).

Supreme Court Decision in Couch May Intensify IRS Summons Activity Against Accountants, 6 The Practical Accountant No. 16 (1973) (with A. L. Schwait).

Suing for a Tax Refund, 6 The Practical Accountant No. 48 (1973) (with A. L. Schwait).

What can a Taxpayer do when a Case Has been turned over for Collection: Administrative and Legal Remedies: Powers of the Agent, 29 NYU Institute Federal Taxation 909 (1971).

How to Settle a Tax Refund Suit, 17 Prac. Law (1971) (with A. L. Schwait).

Death and Taxes: Bankruptcy Now Discharges Some Tax Debts, 3 Maryland Bar Journal 38 (1971).

Improving The Procedural System Under Which Tax Controversies Are Resolved, 33 J. Taxation 278 (1970).

Fifth Amendment Protection of the Accountant's Workpapers in Tax Fraud Investigations, 47 Taxes 12 (1969) (with W. H. Burke).

Diagnosis of Tax Fraud Investigations, 55 ABA Jour. 441 (1969) (with S. H. Sack).

Choosing your Forum in Civil Tax Litigation, 15 Prac. Law 41 (1968).

Techniques for Achieving a Good Settlement of Tax Court Cases, 26 J. of Taxation 374 (1967) (with R. L. Frome).

Selecting the Court for the Optimum Disposition of a Tax Controversy, 27 J. of Taxation 216 (1967) (with R. L. Frome).

Columns for Daily Tax Report of Prentice Hall PHINet (computer research) system from March 15, 1984 to date.

(There are no copies or press reports of speeches by me on issues involving constitutional law or legal policy.)

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent health. Last physical examination on June 13, 1989

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court ruling on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinion.

Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I did not serve as a clerk to a judge.

2. whether you practiced alone, and if so, the addresses and dates;

Yes. From 1967 to 1971 at 1718 Munsey Building, Baltimore, Maryland 21202.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

1961-1962 E. Barrett Prettyman Fellowship Program

The Program operated a "public defender" office under the supervision of George Shadoan, Esquire in which the Fellows received intensive training in litigation skills and tried misdemeanor and felony cases in the courts of the District of Columbia. I was a Fellow.

Georgetown Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
(202) 624-8000

1962 Project on Law and Psychiatry

I was an assistant to the director of this project sponsored by the William A. White Foundation. I tried cases, worked on appeals, assisted other counsel and did research concerning legal/psychiatric issues.
Then,
Suite 605
2000 P Street, N.W.
Washington, D.C.
(No longer exists)

1963-1967 Government Service
Tax Division (Criminal and
Civil Trial Sections)
United States Department of Justice
Washington, D.C. 20530

1967-1971 Sole practioner
Suite 1718
Munsey Building
Baltimore, Maryland 21202

1971-1986 Member of law firm
Garbis, Marvel & Junghans, P.A.
(Originally Garbis and Schwait)
36 S. Charles Street
Baltimore, Maryland 21201

1986-1988
Member of law firm
Melnicove, Kaufman, Weiner,
Smouse & Garbis, P.A.
100 S. Charles Street
Baltimore, Maryland 21201

1988 -
Member of law firm
Johnson & Gibbs
1001 Pennsylvania Avenue, N.W.
Suite 745
Washington, D.C. 20004

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

1961-1962	"Public defender" - Serving as court appointed counsel for indigents in the courts of the District of Columbia, primarily as a member of the E. Barrett Prettyman Fellowship Program. Also, worked on a project on law and psychiatry.
1963-1967	Government service - Trial attorney for the United States in tax litigation in the United States District Courts in the Midwestern and Northeastern states
1967-	Private practice - Federal litigation, primarily tax (civil and criminal), "white collar" criminal and related matters, throughout the United States.

b. 2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

The typical client is a business entity, businessman or a professional who has a problem with an agency of the federal government, often, but not exclusively, the Internal Revenue Service. I have devoted more than half of my professional activities to the field of civil and criminal tax litigation.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appear in court on a frequent basis but the nature of the practice requires far more out of court than in court time. I tried more cases to verdict or judgment in prior years. Recently, I have devoted my time, as sole or chief counsel, to longer and more complex cases and have assigned less complex matters, and those providing trial opportunities, to others in my firm.

c. 2. What percentage of these appearances was in:

(a) Federal courts - 90%

(b) State courts of record - 10%

(c) other courts - 0%

c. 3. What percentage of your litigation was:

(a) civil - 50%

(b) criminal - 50%

c. 4. State the number of cases in courts of record you tried to verdict or judgement (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried approximately 50 cases to verdict or judgment. I was sole or chief counsel for my client in more than 90% of the cases.

c. 5. What percentage of these trials was:

(a) jury - 40%

(b) non-jury - 60%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Please see the following pages[*] regarding:.

1. The Fairchild Industries Case

In re Grand Jury Subpoenas April, 1978 at Baltimore, 581 F. 2d 1103 (4th Cir. 1978).

United States v. Fairchild Industries, Inc., 464 F. Supp. 1285 (D. Md. 1979).

In re Swearingen Aviation Corporation, 605 F. 2d 125 (4th Cir. 1979), affirming, 486 F. Supp. 9 (D. Md. 1979).

2. The "Project Haven" Prosecution

U.S. v. Baskes, 433 F. Supp 799 (N.D. Ill. 1977).

U.S. v. Baskes, 40 AFTR 2d 77-5586 (N.D. Ill. 1977).

3. The Homefinders' Prosecution

U.S. v. Glist, 594 F.2d 1374 (10th Cir. 1979) (affirming dismissal).

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[*] Copies of the decisions cited below are provided in an appendix.

4. The Omni Case

United States v. Omni International Corp., 634 F. Supp. 1414 (D. Md. 1986).

5. The Schoeberlein Case

United States v. Schoeberlein, 335 F. Supp. 1048 (D. Md. 1971).

6. The Helen Wade Green Estate Case

Cleveland Trust Co. v. United States, 266 F. Supp. 824 (N.D. Ohio 1966).

7. The Jeopardy Assessment Case

Schreck v. United States, 301 F. Supp. 1265 (D. Md. 1969) and 375 F. Supp. 742 (D. Md. 1973).

8. The Case of Senator Frank McCourt

Bar Association of Baltimore City v. McCourt, 276 Md. 326, 347 A.2d 208 (Md. 1975).

9. The Travel Act Case

United States v. LeFaivre, 507 F. 2d 1288 (4th Cir. 1974), cert. denied 420 U.S. 1003 (1975)

10. The "Four Star Salute" Case

Comptroller v. Mandel Re-Election Comm, 280 Md. 575, 374 A.2d 1130 (Md. 1977).

1. THE FAIRCHILD INDUSTRIES CASE

Substance and Significance

Fairchild Industries, Inc., a manufacturer of military and commercial aircraft, was investigated by the Internal Revenue Service and, thereafter, by a federal grand jury in the District of Maryland. The investigation included significant litigation regarding then novel issues concerning the power of federal grand juries in tax investigations. *In re Grand Jury Subpoenas, April, 1978 at Baltimore*, 581 F. 2d 1103 (4th Cir. 1978).

The grand jury investigation resulted in the indictment and trial of Fairchild Industries and its chief executive officer on charges of filing false corporate income tax returns. After several weeks of trial the District Court dismissed the indictment (legally, as of the conclusion of opening statements). *United States v. Fairchild Industries, Inc.*, 464 F. Supp. 1285 (D. Md. 1979).

The grand jury investigation resumed following the dismissal of the indictment. In the course of that investigation there was significant litigation regarding the propriety of the issuance of secrecy orders to recipients of grand jury subpoenas. *In re Swearingen Aviation Corporation*, 605 F. 2d 125 (4th Cir. 1979), *affirming*, 486 F. Supp. 9 (D. Md. 1979).

My Participation

I was the chief counsel for Fairchild Industries, Inc., throughout the investigation, trial and appellate proceedings, as well as the civil tax controversy that followed.

Date of Representation

January 8 to February 7, 1979
(15 trial days, with recesses)
Representation started in 1978.

Courts and Judges

Criminal Trial:

Honorable James R. Miller, Jr.
United States District Court
for the District of Maryland

Grand Jury Issues:

Trial:

Hon. Alexander Harvey, II,
United States District Court
for the District of Maryland

Appeal:

Hon. Harrison L. Winter,
Hon. K. K. Hall
Hon. John A. Field, Jr.
United States Court of Appeals
for the Fourth Circuit

Grand Jury Secrecy Orders:

Trial:

Hon. C. Stanley Blair
United States District Court
For the District of Maryland

Appeal:

Hon. Harrison L. Winter
Hon. John D. Butzner, Jr.
Hon. K. K. Hall
United States Court of Appeals
For the Fourth Circuit

Co-Counsel:

Paula M. Junghans, Esquire
Venable, Baetjer & Howard
1800 Mercantile Bank &
Trust Building
Two Hopkins Plaza
Baltimore, MD 21201
(301) 244-7400

Stephen C. Struntz, Esquire
Melnicove, Kaufman, Weiner, &
Smouse, P. A.
100 South Charles Street
Baltimore, Maryland 21201
(301) 332-8500

Corporate General Counsel:

Richard R. Molleur, Esquire
Heron, Burchette, Ruckert & Rothwell
1025 Thomas Jefferson Street, N. W.
Washington, D. C. 20007
202-898-7707

Special Counsel for the Corporate Board of Directors:

Samuel Dash, Esquire
Georgetown University Law Center
600 New Jersey Avenue, N. W.
Washington, D. C. 20001
202-624-8000

Counsel for Other Parties

Co-Defendant Uhl:

Herbert J. Miller, Jr., Esquire
Miller, Cassidy, Larroca & Lewin
2555 M Street, N. W., Suite 500
Washington, D. C. 20037
202-293-6400

William H. Jeffress, Jr., Esquire
Miller, Cassidy, Larroca & Lewin
2555 M Street, N. W., Suite 500
Washington, D. C. 20037
202-293-6400

Principal Government Counsel:

United States Attorney
Russell T. Baker, Jr., Esquire
Presently,
10342 Sixpence Court
Columbia, Maryland 21044
(301) 730-8336

Assistant U. S. Attorney
D. Christopher Ohly, Esquire
Presently,
Melnicove, Kaufman, Weiner & Smouse, P. A.
100 South Charles Street
Baltimore, Maryland 21201
(301) 332-8500

Assistant U.S. Attorney
James A. Rothschild, Esquire
Presently,
Anderson, Coe & King
800 Fidelity Building
Charles and Lexington Streets
Baltimore, Maryland 21201
(301) 752-1630

Appellate Counsel (Justice Department)
James A. Bruton, Esquire
Presently,
Williams & Connolly
839 17th Street, N.W.
Washington, DC 20006
(202) 331-5000

2. THE "PROJECT HAVEN" PROSECUTION

Substance and Significance

Following an unusual I.R.S. undercover operation, three members of a major Chicago law firm and one of its clients were investigated and ultimately indicted for conspiring to defraud the United States. The prosecution was instituted in the District of Nevada and some of the pretrial proceedings were held there. On the defendants' motion, venue was transferred to the Northern District of Illinois where pretrial proceedings were completed and trial was held. See, regarding some of the pretrial matters, U.S. v. Baskes, 433 F.Supp 799 (N.D. Ill. 1977), and U.S. v. Baskes, 40 AFTR 2d 77-5586 (N.D. Ill. 1977).

The case was significant because of the search and seizure issues, which eventually were resolved by the Supreme Court in a case in which I was not counsel. See Payner v. United States, 447 U.S. 727 (1980). The case was also important because of the impact on tax compliance of the prosecution of tax attorneys of national stature.

My Participation

The investigative phase of the case included extensive discovery proceedings in a related civil case. I was co-counsel for all defendants in the civil matter. I was the chief counsel for Alan H. Hammerman, one of the attorney defendants, during the grand jury investigation and in pretrial proceedings in the criminal prosecution. The charges against Mr. Hammerman and the client defendant were dismissed shortly before trial. Thereafter, I assisted trial counsel for the other defendants during the trial. I did not participate in the appeal from the conviction of one of the defendants.

Date of Representation

November 9-23, 1977 (Trial)
Representation started in 1975.

Courts and Judges

Hon. Bruce R. Thompson
United States District Court For
the District of Nevada

Hon. Bernard M. Decker
United States District Court For
the Northern District of
Illinois

Co-Counsel

For all defendants:
(prior to grand jury
investigation):

Harvey M. Silets, Esquire
Silets & Martin
The Marquette Building
15th Floor
140 South Dearborn Street
Chicago, Illinois 60603
(312) 263-5800

For Alan H. Hammerman:

L. Paige Marvel, Esquire
Venable, Baetjer & Howard
1800 Mercantile Bank &
Trust Building
Two Hopkins Plaza
Baltimore, MD 21201
(301) 244-7400

Counsel for Other Parties

Defendant Baskes
(trial):

Harvey M. Silets, Esquire
Silets & Martin
The Marquette Building
15th Floor
140 South Dearborn Street
Chicago, Illinois 60603
(312) 263-5800

Defendant Kanter
(trial):

George J. Cotsirilos, Esquire
Cotsirilos & Crowley
33 North Dearborn Street
Chicago, Illinois 60602
(312) 263-0345

Defendant Zell (trial):

Bruce I. Hochman, Esquire
Hochman, Salkin & DeRoy
7th Floor, West Tower
9100 Wilshire Boulevard
Beverly Hills, California 90212
(212) 273-1181

For the Government:

Cono R. Namorato, Esquire
Chief, Criminal Section
Tax Division
U.S. Dept. of Justice
Presently,
Caplin & Drysdale
Suite 1200
1 Thomas Circle, N.W.
Washington, D.C. 20005
(202) 862-5090

Joseph W. Salus, Esquire
Tax Division, Criminal Section
U.S. Dept. of Justice
Presently,
4813 Wellington Drive
Chevy Chase, Maryland 20815
(301) 951-3547

Samuel L. Strother, Esquire
Tax Division, Criminal Section
U. S. Dept. of Justice
Room 6132
Washington, D.C. 20530
(202) 633-2980

3. THE HOMEFINDERS PROSECUTION

Substance and Significance

The Internal Revenue Service conducted an undercover investigation of a franchised rental referral business based in Denver which had more than 50 offices in the United States and Canada. Simultaneous searches and I.R.S. summonses were used to gather information which resulted in the prosecution of three principals and a tax return preparer on conspiracy charges. The case presented major issues regarding the propriety of undercover operations involving legitimate business operations and preindictment delay. After a pre-trial suppression hearing, the court reserved ruling until after trial so that it could identify the sources of various items of evidence. After five days of testimony before a jury, during which various irregularities occurred, and a further day devoted to legal arguments, the Court dismissed the indictment. U.S. v. Glist, 594 F.2d 1374 (10th Cir. 1979)(affirming dismissal).

The case presented substantial issues regarding the proper use of undercover operations, the "taint" applicable to illegally obtained evidence, the remedy for inappropriate government conduct and preindictment delay. It was a novel case involving the use of an undercover agent in a legitmate business operation.

My Participation

I was the chief attorney for Ronald L. Phares, one of the two principal defendants throughout the investigative stage and the trial. At trial, I was lead counsel for all defendants with respect to the government conduct and preindictment delay issues. I did not argue the case on appeal.

Date of Representation

April 4-11, 1977
Representation started about 1976.

Courts and Judges

Trial:

Hon. Richard P. Matsch
United States District Court
for the District of Colorado

Appeal:

Hon. Robert H. McWilliams
Hon. Jean S. Breitenstein
Hon. James K. Logan
United States Court of Appeals
for the Tenth Circuit

Co-Counsel:

Stephen C. Struntz, Esquire
Melnicove, Kaufman, Weiner &
Smouse, P.A.
100 South Charles Street
Baltimore, Maryland 21201
(301) 332-8500

Counsel for Other Parties:

For Defendant Glist:

Leslie H. Wald, Esquire
Deceased

Stanley Drexler, Esquire
Drexler & Wald
3 Park Central
Suite 1040
1515 Arapahoe Street
Denver, Colorado 80202
(303) 825-3531

Michael J. Abramovitz, Esquire
1625 Broadway
Denver, Colorado 80202
(303) 592-5404

For Defendant Senderhauf:

Charles H. Foster, Esquire
1761 S. Lima Street
Aurora, Colorado 80012
(303) 695-8527

For Defendant Simon:

Timothy Correll, Esquire
Suite 203
899 Logan Street
Denver, Colorado 80203
(303) 861-8484

Government Counsel:

Assistant United States Attorney
Richard S. Vermeire
Presently,
Suite 600
730 17th Street
Denver, Colorado 80202
(303) 623-1770

4. THE OMNI CASE

Substance and Significance

After a five year investigation, Omni International Corporation, its three principal officers and its outside lawyer/accountant were indicted on federal income tax and conspiracy charges. The indictment alleged that the Corporation evaded its federal income tax obligations by treating millions of dollars derived from aircraft sales as income of its tax-exempt Bermuda subsidiary rather than income of the U.S. parent.

Pre-trial motions alleged, *inter alia*, that the government had improperly invaded the attorney-client privilege during the course of the investigation. The hearing on the motion was extended by virtue of acts committed during the hearing itself by government agents and the Assistant U.S. Attorney. The hearing consumed twenty-eight days over a ten month period. The district court found that government personnel, including two Internal Revenue Service agents and an Assistant United States Attorney, had not acted properly and had not testified accurately. The district court dismissed the indictment, without prejudice, and disqualified the I.R.S. agents and the Assistant United States Attorney from further participation in the case.

This case resulted in a decision detailing the district court's view that an apparently unprecedented level of government misconduct had occurred, not only during the investigation but also during the proceedings before the court. *United States v. Omni International Corp.*, 634 F. Supp. 1414 (D. Md. 1986).

My Participation

I was primary counsel for Defendant Wayne J. Hilmer (majority shareholder of the defendant corporation) throughout the proceedings.

Date of Representation

June 11, 1984 to March 12, 1985
(28 days of hearings)
Representation started in 1980.

Courts and Judges

Hon. Walter E. Black, Jr.
United States District Court
for the District of Maryland

Counsel for Other Parties

For Defendant Westrick:

Brendan V. Sullivan, Jr., Esquire
Williams & Connolly
839 17th Street, N.W.
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(202) 331-5000

Barry S. Simon, Esquire
Williams & Connolly
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For Defendant Barnett:

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Washington, D.C. 20005
(202) 862-5090

Bernard S. Bailor, Esquire
Caplin & Drysdale
1 Thomas Circle
Suite 1200
Washington, D.C. 20005
(202) 862-5090

For Defendant
Omni International Corp.:

Paula M. Junghans, Esquire
Venable, Baetjer & Howard
1800 Mercantile Bank &
Trust Building
Two Hopkins Plaza
Baltimore, MD 21201
(301) 244-7400

For Defendant Bornstein:

James E. Merritt, Esquire
Morrison & Foerster
345 California Street
San Francisco, CA 54104
(415) 434-7000

John W. Spiegel, Esquire
Munger, Tolles & Olsen
355 S. Grand Avenue
Los Angeles, California 90007
(213) 683-9152

For Government:

United States Attorney
J. Frederick Motz, Esquire
Presently, Judge
United States District Court
for the District of Maryland
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Asst. United States Attorney
Elizabeth H. Trimble, Esquire
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Asst. United States Attorney
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Presently, Magistrate
United States District Court
for the District of Maryland
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Presently,
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16th Floor
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Asst. United States Attorney
Steven A. Allen, Esquire
Presently,
Melnicove, Kaufman, Weiner &
Smouse, P.A.
100 South Charles Street
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Ronald A. Cimino, Esquire
Criminal Section
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(202) 633-5762

John R. Maney, Jr., Esquire
Criminal Section
Tax Division
United States Dept. of Justice
Washington, D.C. 20530
(202) 633-2980

5. THE SCHOEBERLEIN CASE

Substance and Significance

Mr. Schoeberlein, an accountant, had custody of a client's records for use in connection with a civil tax examination. The I. R. S. subsequently instituted a criminal investigation and the Special Agent served a summons on Mr. Schoeberlein seeking the records. Mr. Schoeberlein returned the documents to his client after receiving the summons. The Internal Revenue Service brought an action to enforce the summons and to hold Mr. Schoeberlein in contempt for relinquishing possession of the summoned documents. In an oft-cited decision, the district court set forth guidelines on the duties of a party in possession of summoned records and held that the accountant should not have returned the records. However, recognizing that this was a case of first impression, that there had been divergent views expressed in the professional literature, and that there had been no tampering with the documents, the district court did not hold Mr. Schoeberlein in contempt. United States v. Schoeberlein, 335 F. Supp. 1048 (D. Md. 1971).

My Participation

I was sole counsel for Mr. Schoeberlein.

Date of Representation

Hearing approximately September, 1970. Representation started in 1970.

Court and Judge

Hon. Roszel Thomsen
United States District Court
for the District of Maryland

Counsel for Other Parties

For Intervening Respondents:	Norman P. Ramsey, Esquire Presently, Judge United States District Court for the District of Maryland United States Courthouse Baltimore, Maryland 21201 (301) 962-2722
	H. Thomas Howell, Esquire Semmes, Bowen & Semmes 250 W. Pratt Street Baltimore, Maryland 21201 (301) 539-5040
For the Government:	John Mullenholz, Esquire Tax Division U.S. Dept. of Justice Presently, Neill, Mullenholz & Shaw 900 Seventeenth Street, N.W. Washington, D.C. 20006 (202) 463-8400

6. THE HELEN WADE GREEN ESTATE CASE

Substance and Significance

This was a tax refund suit brought by the Estate of Helen Wade Green. Mrs. Green, heiress to the Western Union fortune, had been a socially prominent Cleveland philanthropist. The substantive issue was whether a transfer of more than one million dollars to her daughter, made within three years of Mrs. Green's death, was "in contemplation of death." The Estate contended that the transfer was made in order to enable the daughter immediately to carry on the family tradition of support for charitable organizations. The government contended that the transfer was made to avoid estate taxes.

Prior to trial, the case presented significant administrative procedure issues by virtue of the Estate's contention that the Internal Revenue Service was bound by a putative settlement reached in the administrative process. The court denied the Estate's motion for summary judgment on this basis. Cleveland Trust Co. v. United States, 266 F. Supp. 824 (N.D. Ohio 1966).

Following a lengthy trial, the jury was unable to reach a unanimous verdict. In the second trial, tried by different counsel before a different judge, the court directed a verdict for the Estate at the close of all of the evidence. On appeal, the trial court was reversed, the case was remanded and, ultimately, settled. See Cleveland Trust Co. v. United States, 421 F.2d 475 (6th Cir. 1970) for the appellate proceedings.

My Participation

I was the chief attorney for the government in the pretrial proceedings and at the first jury trial. I did not participate in either the second trial or the appeal.

Date of Representation

April, 1967
(approx. one week trial)
Representation started about 1965.

Courts and Judges

Summary Judgment:

Hon. William K. Thomas
United States District Court
for the Northern District of
Ohio

Jury Trial

Hon. Frank J. Battisti
United States District Court
for the Northern District of
Ohio

Co-Counsel

Michael E. Marr, Esquire
U.S. Justice Dept.
Presently,
Marr, Swiss & Woods
Suite 900
301 N. Charles Street
Baltimore, Maryland 21201
(301) 539-4250

Counsel for Other Parties

Thomas V. Koykka, Esquire
Deceased

Carlton B. Schnell, Esquire
Arter & Hadden
1100 Huntington Building
Cleveland, Ohio 44115
(216) 696-1100

7. THE JEOPARDY ASSESSMENT CASE

Substance and Significance

This case presented the first challenge to a long standing Internal Revenue Service jeopardy assessment practice. The issues were extremely complex and required detailed examination of the creation and evolution of the federal system of tax litigation. *See Schreck v. United States*, 301 F. Supp. 1265 (D. Md. 1969) and 375 F. Supp. 742 (D. Md. 1973). For a discussion of this case see Meyers, "Termination of Taxable Year; Procedures in Jeopardy," 26 Tax L. Rev. 829 (1971). The Court's decision against the government in this case was cited with approval by the Supreme Court when the issue was finally presented in an unrelated case. *Laing v. United States*, 423 U.S. 161 (1976). In addition, the Internal Revenue Code was amended by the Tax Reform Act of 1976 to correct the matter for the future.

My Participation

I was the sole substantive attorney for the plaintiff.

Date of Representation

Several hearings from December, 1968 through August, 1973
Representation started in 1968.

Courts and Judges

Honorable Frank A. Kaufman
United States District Court
for the District of Maryland

Counsel for Other Parties

For Phillip Silbert:
(Related case)

Norman P. Ramsey, Esquire
Presently, Judge,
United States District Court
for the District of Maryland
United States Courthouse
Baltimore, Maryland 21201
(301) 962-2722

H. Thomas Howell, Esquire
Semmes, Bowen & Semmes
10 Light Street
Baltimore, Maryland 21202
(301) 539-5040

Government Counsel:

Paul R. Kramer, Esquire
Assistant United States Attorney
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(301) 727-5531

Richard F. Mitchell, Esquire
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JCB Building
Washington, D.C. 20001
(202) 272-6569

James H. Jeffries, III, Esquire
Tax Division
U.S. Dept. of Justice
Room 7913
JCB Building
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(202) 724-6543

8. THE CASE OF SENATOR FRANK McCOURT

Substance and Significance

Frank McCourt, a Maryland State Senator and attorney, suddenly left the country and was later found in India. While he was missing, the Internal Revenue Service commenced a criminal investigation. Upon Mr. McCourt's return to the United States he was indicted on four counts of willfully failing to file income tax returns. The district court proceeding, which included a suppression and taint hearing relating to the seizure of law office records, was resolved by agreement. In accordance with the agreement, there was a finding of guilty based upon a plea of *nolo contendere* to one count and the sentence imposed was one year of probation.

The Bar Association of Baltimore City instituted a grievance proceeding based on the federal conviction which was tried before a panel of three Circuit Court (trial court) judges. Ultimately, the Court of Appeals of Maryland recognized that a willful failure to file tax returns was a crime involving moral turpitude and required a sanction. However, by a vote of 5 to 2, the Court of Appeals ruled that it was permissible to impose a sanction less severe than disbarment and imposed a one year suspension from practice. *Bar Association of Baltimore City v. McCourt*, 276 Md 326, 347 A.2d 208 (1975).

My Participation

I was chief counsel for Mr. McCourt in all proceedings.

Date of Representation

Federal District Court:	April 19 and May 1, 1972
State Grievance Proceeding:	December 2, 1974
	Representation started about 1970.

Courts and Judges:

Federal District Court

Hon. Frank A. Kaufman
United States District
for the District of Maryland
United States Courthouse
Baltimore, Maryland 21201
(301) 962-4360

State Trial Proceedings:

Hon. Anselm Sodaro
Hon. James A. Perrott
Hon. Robert I. M. Hammerman
Circuit Court for Baltimore City

State Appellate Proceedings:

Hon. Robert C. Murphy, C. J.
Hon. Frederick J. Singley, Jr.
Hon. Marvin H. Smith
Hon. J. Dudley Digges
Hon. Irving A. Levine
Hon. John C. Eldridge
Hon. William J. O'Donnell
Court of Appeals of Maryland

Co-Counsel:

Sylvan H. Sack, Esquire
2404 St. Paul Street
Baltimore, Maryland 21201
(301) 243-6404

Counsel for Other Parties

Government Counsel:

Paul R. Kramer, Esquire
Assistant U.S. Attorney
Presently,
231 St. Paul Place
Baltimore, Maryland 21202
(301) 727-5531

Bar Association of Baltimore City:

Robert W. Kernan, Esquire
4316 Hamilton Street
Hyattsville, Maryland 20871
(301) 277-5693

9. THE TRAVEL ACT CASE

Substance and Significance

This case presented an important issue regarding the extent to which the use of interstate facilities was necessary to permit the application of the "Travel Act" (18 U.S.C. Section 1952). I represented the principal defendent (i.e., the "banker"), his two daughters and his son (who were associated in the enterprise). They were engaged in a local gambling enterprise in which checks totalling approximately $1,500,000 were negotiated during 1968, 1969 and 1970. The only proof of the use of interstate facilities consisted of fourteen checks drawn on out of state banks that were passed from "writers" to the banker in the settlement of accounts and which thereafter cleared through interstate facilities. Following conviction of my clients there was an appeal.

On appeal the Fourth Circuit affirmed the convictions, holding that it was not necessary that the use of interstate facilities be substantial or integral to the operation of the illegal enterprise. The Fourth Circuit also held that the defendants need not intend to use or know of the use of interstate facilities. It was only necessary that interstate facilties were used. United States v. LeFaivre, 507 F. 2d 1288 (4th Cir. 1974), cert. denied 420 U.S. 1003 (1975).

My Participation

I was counsel for Louis C. LeFaivre and his children in the trial and appellate proceedings.

Date of Representation

September 17 - 25, 1973
Representation started about 1972.

Courts and Judges

Trial:

Hon. Edward S. Northrop
United States District Court
for the District of Maryland

Appeal:

Hon. L. Braxton Craven, Jr.
Hon. John D. Butzner, Jr.
Hon. John A. Field, Jr.
United States Court of Appeals
for the Fourth Circuit

Counsel for Other Parties:

Defendant Tamburello:
Peter S. Angelos, Esquire
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Towson, Maryland 21204
(301) 825-7300

Stephen B. Caplis, Esquire
Melnicove, Kaufman, Weiner &
Smouse, P.A.
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(301) 332-8500

Defendant Hawse:
Roger C. Duncan, Esquire
4017 Hamilton Avenue
Hyattsville, Maryland 20781
(301) 699-4728

Government Counsel:

William Pope, Esquire
Criminal Division
United States Dept. of Justice
Presently,
National Labor Relations Board
Division of Administrative
Law Judges
1375 K Street, N.W.
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Hamilton Building
Washington, D.C. 20005
(202) 633-0500

Stanley E. Greenidge, Esquire
Criminal Division
United States Dept. of Justice
Washington, D.C. 20530
(recent address unknown)

10. THE "FOUR STAR SALUTE" CASE

Substance and Significance

The Governor, Lt. Governor, Comptroller, and Attorney General of Maryland ran (successfully) for renomination and re-election. A $100 per ticket fund raiser (the "Four Star Salute") held at the Baltimore Civic Center was attended by over 7,000 people and raised $850,000. In addition to providing the advertised cocktail party and buffet, the caterer suggested, and the sponsors agreed, that an additional $130 should be spent to hire organists to provide background music. When the Admissions and Amusement Tax Division of the Comptroller's Office learned that there had been music at the Four Star Salute it contended that "a performance" had been furnished, rendering the gross receipts subject to over $80,000 of local admission and amusement tax administered by the Comptroller.

The Re-election Committee paid the tax, and filed a claim for refund which was denied by the Comptroller in his official capacity. Thereafter, a tax refund suit was brought and proceeded through the state judicial system. The Maryland Tax Court held that there had been a "performance" and that the proceeds were taxable. The Baltimore City Court reversed the Tax Court. The Court of Appeals of Maryland affirmed the Baltimore City Court, holding the proceeds not subject to tax.

The case was particularly significant because, in a highly publicized legal proceeding, the State's legal system operated, and was perceived to have operated fairly and openly. The Comptroller took legal positions contrary to his own campaign committee in order to protect the revenue. The Attorney General's staff effectively represented the State's position that the tax was due. Moreover, the ultimate decision of the highest court in Maryland, resolving an issue on which the lower courts had disagreed, was generally accepted in Maryland as a fair and reasonable conclusion, and provided needed guidance on the interpretation of an important state statute. Comptroller v. Mandel Re-Election Comm., 280 Md. 575, 374 A.2d 1130 (1977).

My Participation

I was chief counsel for the Mandel, Lee, Goldstein, Burch Re-Election Committee in all proceedings.

Date of Representation

July 30-31, 1975
Representation started in 1975.

Courts and Judges

Trial:

Hon. Seymour Korn
Hon. John Wood Logan
Hon. Henry D. Blair
Hon. John G. Arthur
Hon. Woodward D. Pealer
Maryland Tax Court

Intermediate Appeal:

Hon. Martin B. Greenfeld
Circuit Court for Baltimore City

Appeal:

Robert C. Murphy, Chief Judge
Hon. Frederick J. Singley, Jr.
Hon. Marvin H. Smith
Hon. J. Dudley Digges
Hon. Irving A. Levine
Hon. John C. Eldridge Orth
Court of Appeals of Maryland

Hon. Ridgely P. Melvin, Jr.
Md. Court of Special Appeals
(specially assigned)

Co-counsel:

L. Paige Marvel, Esquire
Venable, Baetjer & Howard
1800 Mercantile Bank &
Trust Building
Two Hopkins Plaza
Baltimore, MD 21201
(301) 244-7400

Counsel for other Parties:

Gerald Langbaum, Esquire
Assistant Attorney General
Louis L. Goldstein Treasury
Building
Annapolis, Maryland 21401
(301) 974-2808

J. F. Oster, Esquire
Deceased

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

I have represented clients in many civil and criminal controversies that did not progress to trial. The responses to question 18 provide representative descriptions of these types of matters.

In addition to serving clients, I have devoted a substantial portion of my professional life to service to the profession and the public. I consider these activities to be among the most significant of my legal activities.

I have, during my entire career in private practice, worked extensively in the field of continuing professional education. I have taught and lectured on legal subjects at seminars on dozens of occasions each year. In addition, I served as the Chairman of the Continuing Legal Education Committee of the Maryland State Bar Association in the 1970's and was one of the founders, and a president, of the Maryland Institute for Continuing Professional Education for Lawyers (MICPEL). This entity, created by the State Bar Association and the law schools in the State, is the principal provider of continuing legal education in Maryland. I have served and continue to serve on boards which coordinate and produce continuing professional education programs including, for example, the Maryland Judicial Institute, the New York University Federal Tax Institute Advisory Board and the ALI/ABA Course Advisory Board.

I have worked to make available assistance for lawyers who need aid in order to continue to serve clients competently. I was an active member of the committee established by the Maryland State Bar Association to set up a system to assist lawyers who needed help in coping with their professional obligations. The committee work resulted in the establishment of the Lawyer Counseling Service which has helped many lawyers to overcome problems, frequently arising from alchoholism and substance abuse. I also served on a committee for the United States District Court for the District of Maryland to establish rules of admission as well as a mechanism for assisting lawyers needing assistance as provided by the State Bar's Lawyer Counseling Service.

I have worked to improve the country's federal tax litigation system. In the 1970's I served on an A.B.A. Tax Section committee which worked extensively with the United States Tax Court to draft its modern rules of practice and procedure. In addition, I served on the Tax Section Committee which provided substantial input to the Internal Revenue Service and the Congress in designing the partnership tax procedures which were enacted into law in 1982. I served as Chairman of the A.B.A. Tax Section's Task Force on the Taxpayer Bill of Rights legislation. I am also serving as the Tax Section representative on a Task Force on Tax Penalties which has been established by Senator David Pryor.

Finally, I note that I also consider a significant activity my regularly devoting my time to answering questions and trying to help (without compensation) those who have read my books or have heard me speak and wish some professional guidance.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Johnson & Gibbs

This is my current employer. I will terminate my employment and ownership interest in the firm prior to entering government service. The firm will pay me any unpaid compensation and will redeem my shareholding ($100) within 30 days after termination of employment. I will have no continuing interest in the firm.

Melnicove, Kaufman, Weiner & Smouse, P.A.

This is my former employer. I will relatively shortly receive, and "roll over" to an IRA, my vested interest in the firm's profit sharing plan. The firm owes me compensation for past services and a repayment of capital. I have no other continuing interest in this firm.

West Publishing Company:

I am entitled, together with co-authors, Stephen C. Struntz and Ronald B. Rubin, to royalties on book sales so long as the casebook, "Cases and Materials on Tax Procedure and Tax Fraud" (2nd edition) is sold. The amount varies but, based on prior years, my share can reasonably be estimated to be approximately $1,250 per year.

Warren, Gorham & Lamont

I am entitled, together with co-authors Paula M. Junghans and Stephen C. Struntz, to royalties on book and supplemdnt sales so long as the book "Federal Tax Litigation" and its supplements are sold. The amount varies but, based on prior years, my share can reasonably be estimated to be approximately $1,500 per year.

Estate of Claire Millard

I am co-executor of the (New York) Estate of Claire Millard, a former client. I expect to resign as co-executor upon entering government service and expect to receive as portion of the executor's fee as may be approved by the court within a few months thereafter.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to preset potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will comply fully with all applicable ethical and legal standards to avoid a conflict of interest or the appearance of one. Consistent with these standards it will be necessary to decline to accept assignment of certain cases. For example, those in which I have (or a member of my immediate family has) a financial interest, those which were pending in my present law firm during my association wth the firm, those involving former clients if I derived knowledge regarding the case in the course of my professional relationship, etc. However, other than particular circumstances which may require my disqualification in specific cases I do not believe that conflict of interest considerations will interfere with my providing judicial services.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

My present plans are stated below. To the extent that these plans are prohibited by virtue of any legal or ethical obligation, I will change my plans so as to be in compliance.

University of Maryland Law School

I plan to teach all or part of the course on Federal Tax Procedure in the Spring, [illegible] semester. The University pays compensation to adjunct faculty.

Warren, Gorham & Lamont

As a co-author of the book "Federal Tax Litigation", I am required to produce annual supplements (and periodic new editions). Royalties are paid based on [illegible] among the co-authors.

I wish to continue as a department editor for the Journal of Taxation. The publisher pays an honorarium, currently $900 per year, for department editors.

West Publishing Company

As a co-author of the casebook "Tax Procedure and Tax Fraud," I am required to produce periodic supplements and new editions. Royalties are paid based on sales and divided among the co-authors.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Received During 1988

Source	Amount	Description
Johnson & Swanson	$ 33,623.04	Wages
Melnicove, Kaufman, Weiner, Smouse & Garbis, P.A.	$329,451.39	Wages
Flowers & Fancies	$ 966.00	Wages (wife)
Barbara Taylor Flowers	$ 1,389.25	Compensation (wife)
Garbis, Marvel & Junghans, P.A.	$ 23,000.00	Distribution (Estimated - corp. return on extension
Table Arrangments, Inc.	$ 1,733.94	Liquidation (wife)
State of Maryland	$ 690.20	Income Tax Refund (Jt)

T. Rowe Price Md. Tax Free Bond Fund	$ 697.95	Dividends
Shearson, Lehman	$ 617.08	Dividends on account (Jt.)
Signet Bank	$ 2,504.01	Interest on checking account
Warren, Gorham & Lamont	$ 900.00	Honorarium
GMJ Writing Group	$ 2,401.76	Share of royalti paid by Warren, Gorham & Lamont, West Publishing Company and Prentice Hall, I
Garbis, Marvel & Junghans Defined Benefit Plan	$419,934.90	Distribution from corporate pension plan rolled over to IRA accounts
T. Rowe Price Prime Reserve Fund, Inc.	$ 900.00	Dividends (Kerri)

Received During 1989 (to June 1)

Johnson & Gibbs	$116,753	Wages
GMJ Writing Group	$2,492.62	Share of Royalties
Piper & Marbury	$6,313.23	Wages (Kendall)

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

PLEASE SEE THE FOLLOWING PAGES.

FINANCIAL STATEMENT

MARVIN J. & PHYLLIS L. GARBIS

As of June 1, 1989[1]

Assets:	
Cash on hand and in banks (Schedule 1)	$ 52,555.83
Listed Securities (Schedule 2)	16,439.75
Real Estate (Schedule 3)	325,000.00
Autos and other personal property	125,000.00
Retirement Plans (Schedule 4)	534,522.66
Other Assets (Schedule 5)	1,100.00
Total Assets	$1,054,618.29
Liabilities:	
Mortgages (Schedule 6)	$ 49,300.00
Total Liabilities	$ 49,300.00
Net Worth	$1,005,318.29

For contingent liabilities and general information see Schedule 7.

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[1] This statement presents a fair representation of our financial condition as of June 1, 1989. Some amounts are estimated and others are derived from account statements issued on dates other than June 1. Accordingly, there may be immaterial variations from precise June 1 amounts. It should be noted that some items, such as retirement plans, are subject to income tax when received.

SCHEDULE 1

CASH ON HAND AND IN BANKS

Marvin J. Garbis	
Signet Checking	$ 1,821.06
T. Rowe Price Md. Tax Exempt Account	33,081.03
Phyllis L. Garbis	
Md. National Bank Checking	861.92
Md. National Bank Savings	5,482.15
Prudential Bache Money Market	10,487.00
Joint Accounts	
Shearson Funds & Credits (Jt.)	822.67
Total	$52,555.83

SCHEDULE 2

LISTED SECURITIES

	Shares	Approx. Value
Marvin J. Garbis:		
Westinghouse Electric	2	$ 127.25
Phyllis L. Garbis:		
U.S.F. & G. (P)	70	2,275.00
Giant Food (P)	80	2,350.00
Nova Pharmaceutical Corp. (P)	400	2,450.00
		7,075.00
Joint:		
Alico, Inc.	50	1,875.00
Carmike Cinemas Inc. CL A	50	500.00
General Cinema Corp.	100	2,512.50
New York Times Class A	100	3,212.50
Western Publishing Group Inc.	50	1,137.50
		9,237.50
TOTAL:		$ 16,439.75

SCHEDULE 3

Real Estate

Joint:

Personal residence (Estimated value)	$250,000.00

Phyllis L. Garbis

Investment Property 786 Harvard Street, N.W. Washington, D.C.	75,000.00

Property is in a 10 year trust and will revert to Phyllis L. Garbis in 1992.

SCHEDULE 4

Retirement Plans

Marvin J. Garbis IRA's:

Managed by Stone Mill Co., Inc.

Details set forth on statement of May 31, 1989 included as Schedule 4A on the following page.

Stone Mill Total	$275,571.65

IRA Funds in Certificates of Deposit

First National Bank of Maryland		
	Matures 6/20/89	$ 42,300.00
	Matures 8/30/89	$ 66,200.00
Signet Bank		
	Matures 6/1/89	$107,495.27
	CD TOTAL	$215,995.27

Melnicove, Kaufman, Weiner & Smouse, P.A.
Profit Sharing Account

Total Value (only 30% vested)	$ [illegible]

[illegible] L. Garbis IRA

T. Rowe Price	$ [illegible]
TOTAL RETIREMENT PLANS	$ [illegible]

SCHEDULE 4A

DETAILS OF IRA PORTFOLIO

Stone Mill Co., Inc.
PORTFOLIO APPRAISAL
Marvin Garbis IRA/RO / 63748-13 / garbmxx7
May 31, 1989

Quantity	Security	Unit Cost	Total Cost	Market Price	Market Value	Pct. Assets	Unit Income	Annual Income	Cur. Yield
	COMMON STOCK								
100.00	Alico	38.02	3,802.28	59.87	5,987.50	2.2	0.200	20.00	0.3
2.00	Berkshire-Hathaway	4,254.40	8,508.80	6,425.00	12,850.00	4.7	0.000	0.00	0.0
100.00	CBS, Inc.	160.59	16,058.80	198.75	19,875.00	7.2	3.000	300.00	1.5
1,000.00	Carmike Cinemas	7.37	7,375.00	9.75	9,750.00	3.5	0.000	0.00	0.0
400.00	Coca-Cola Enterprises	13.60	5,438.66	18.37	7,350.00	2.7	0.050	20.00	.3
500.00	Comcast Class A	15.86	7,928.13	24.50	12,250.00	4.4	0.120	60.00	0.5
100.00	E. W. Scripps "A"	23.64	2,364.02	23.25	2,325.00	0.8	0.300	30.00	1.3
200.00	General Cinema	20.96	4,191.34	25.00	5,000.00	1.8	0.360	72.00	1.4
200.00	Hechinger Class A	17.43	3,485.25	17.75	3,550.00	1.3	0.160	32.00	0.9
100.00	National Presto	29.06	2,906.16	38.75	3,875.00	1.4	1.270	127.00	3.3
300.00	New York Times	28.23	8,469.31	32.75	9,825.00	3.6	0.440	132.00	1.3
100.00	Philip Morris	89.59	8,958.80	139.12	13,912.50	5.0	3.600	360.00	2.6
100.00	[illegible] Corp.	26.63	2,663.05	22.37	2,237.50	0.8	0.280	28.00	1.3
300.00	Rouse Company	22.01	6,603.11	28.00	8,400.00	3.0	0.520	156.00	1.9
200.00	Schlumberger	34.32	6,864.18	39.37	7,875.00	2.9	1.200	240.00	3.0
300.00	Tele-Communications A	25.46	7,639.67	35.12	10,537.50	3.8	0.000	0.00	0.0
100.00	Time, Inc.	97.71	9,771.30	126.75	12,675.00	4.6	1.000	100.00	0.8
200.00	Times Mirror	30.79	6,158.17	39.75	7,950.00	2.9	0.920	184.00	2.3
100.00	U S Trust Co	40.29	4,029.37	38.75	3,875.00	1.4	1.520	152.00	3.9
100.00	Walt Disney	41.97	4,197.00	93.12	9,312.50	3.4	0.400	40.00	0.4
200.00	Washington Post Cl B	194.71	38,942.60	250.00	50,000.00	18.1	1.560	312.00	0.6
650.00	[illegible] Publishing	19.70	12,807.05	22.37	14,543.75	5.3	0.000	0.00	0.0
			181,161.45		233,956.25	84.9		2,365.00	1.0
	CASH AND EQUIVALENTS								
	Cash Balance		-6,047.17		-6,047.17	-2.2	1.000	0.00	0.0
	Shearson Daily Dividend Fund		47,662.57		47,662.57	17.3	*	*	*
			41,615.40		41,615.40	15.1		0.00	0.0
	TOTAL PORTFOLIO		222,776.85		275,571.65	100.0		2,365.00	0.9

SCHEDULE 5

Other Assets[1]

Johnson & Gibbs (Shareholding)	$ 100.00
Stock in Garbis, Marvel & Junghans, P.A., (Estimated Value)	1,000.00
TOTAL	$ 1,100.00

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[1] The amounts due me from Melnicove, Kaufman, Weiner & Smouse for capital ($10,000) and unpaid compensation (approximately $118,000) are assumed to have no value.

SCHEDULE 6

Mortgages

First Mortgage on Personal Residence (Joint)

Balance due on purchase money mortgage for personal residence [Balance as of end of 1987 was $46,748.32. Estimated balance after payments for first five months of 1988 is slightly less than $46,300.	$46,300.00

Owed to Provident Bank of Maryland

Second Mortgage, Equity Line of Credit (Joint)

Have line of credit of $100,000 secured by second mortgage on personal residence

Present liability	$ 3,000.00

Owed to Signet Bank

Total	$49,300.00

SCHEDULE 7

Contingent Liabilities:

Marvin J. Garbis is a guarantor (together with other principals of Garbis, Marvel & Junghans, P.A.) of a debt incurred for the purchase of a computer. The note is being paid by Melnicove, Kaufman, Weiner, Smouse & Garbis, P.A., by virtue of its acquisition of the computer in the merger of the prior firm's law practice into the present firm. The debt is owed to Equitable Bank. The current balance is approximately $9,000.

We are current on all federal income tax obligations. Future income tax liability will accrue as income is realized by virtue of the receipt of several of the assets listed on this statement, for example the unpaid compensation due and the funds in the retirement plans.

General Information:

None of our assets, other than the personal residence, are pledged for any obligations.

We are not defendants in any suit or legal action.

We have never taken bankruptcy.

KERRI JILL GARBIS
(18-year old Daughter)

As of June 1, 1989

ASSETS:

T. Rowe Price Prime Reserve Fund (Held by Phyllis L. Garbis, custodian, Kerri Jill Garbis, Uniform Gift to Minors Act.	$16,100.00
Liabilities	0.00
Net Worth	$16,100.00

KENDALL ROSE GARBIS
(24-year old Daughter)
(As of June 1, 1989)

ASSETS:

T. Rowe Price Prime Reserve Fund	$1,300.00
First National Bank of Maryland	
Checking	470.86
Savings	141.88
TOTAL	$1,912.74
Liabilities	0.00
NET WORTH	$1,912.74

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I was selected to be the Maryland Finance Chairman for the Connolly campaign for President in 1980. However, the Campaign did not become operational. There were no complaints lodged.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

At the beginning of my professional career I devoted my efforts, exclusively, to serving the disadvantaged. After my graduation from law school in 1961 to the end of 1962 I was a "public defender" in the District of Columbia. As a member of the E. Barrett Prettyman Fellowship Program at Georgetown Law School the bulk of my time was devoted to representing indigents in the courts of the District of Columbia. Also, for a few months in 1962, I was working on a Project on Law and Psychiatry in which I represented mental patients at St. Elizabeth's Hospital and indigents accused of crimes.

As noted in the answer to question I.19., I have worked to establish the Lawyer's Counseling Service in Maryland to assist lawyers who are impared due to alchoholism, substance abuse or other causes.

I have, consistently throughout my career, provided legal services without charge for worthy organizations. I am regularly called upon by various charities and similar organizations to assist them in problems (typically involving the Internal Revenue Service) and always help to the extent possible. An example of this is provided by the assistance I provided to the Citizenship Law Related Education Program for the Schools of Maryland. This is an organization which was established by the Maryland State Bar Association to provide education on legal subjects to public school students in Maryland. The organization duly qualified as a tax exempt entity and operated very well. However, due to a misunderstanding, it failed to file annual forms for several years. The Internal Revenue Service assessed substantial penalties against the organization and levied upon its bank account. I was able to get the I.R.S. to abate the assessment, got the organization its funds back and guided it through the process of getting square with the Service.

At the request of the Chief Judge of the Maryland Court of Appeals and the President of the Maryland State Bar Association, I served on the Special Joint Committee on Gender Bias in the Courts. This Committee conducted hearings throughout Maryland and engaged in substantial data gathering efforts to determine whether there is a gender bias problem in the Maryland judicial system and, if so, what suggestions for improvement can be made. I have devoted many hours during the past two years to hearings, committee meetings and research for this Committee.

In addition to regularly providing free legal services to organized charities, I also make it a part of my practice to help those who need my professional assistance, who can in fact be helped (since many cannot be) and who are unable to pay for my services. Frequently this is done at the request of another professional who is also devoting his or her time to a worthy cause without compensation. On other occasions, a person accepted as a regular client develops problems during the course of the representation and is no longer able to pay for needed legal services. In this situation, it has been my practice to continue to help the client in spite of the inability to pay for the services provided.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.

For a brief period in the late 1970's or early 1980's I was a member of a Sherlock Holmes Society in Baltimore called the Six Napoleans. This group, which met a few times per year for dinner and a discussion of Sherlock Holmes stories, was open to male members only. I attended two or three meetings, terminated my membership and joined The Carlton Club, a similar organization which accepted both male and female members.

For less than a year in approximately 1963 I became a member of the Masons which, I believe, was solely a fraternal organiation. I was not an active member and terminated my membership within a year of joining.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination?

Yes, the Committee on Judicial Appointments of the Maryland State Bar Association. I understand that the Committee recommended my nomination.

Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

In December of 1987 the Committee on Judicial Appointments of the Maryland State Bar Association advertised that it wished to consider possible nominees for the United States District Court. I advised the Committee that I was interested in being considered for the position and submitted information regarding my personal background. I was not interviewed by the Committee but I was personally known to most, if not all, of the members. The recommendations of the Committee are not made public and are not communicated to those under consideration. However, it is my understanding that the Committee in fact recommended my nomination.

On March 3, 1988 I was called by the Office of Legal Policy of the United States Department of Justice, was advised that I was under consideration for nomination to the bench and asked to appear for a series of interviews. On March 8, 1988 I was interviewed at the Justice Department.

On April 5, 1988 I was called by Assistant Attorney General Markman and was advised that I had tentatively been selected for nomination. I was asked to complete forms and provide information to the American Bar Association Standing Committee on the Federal Judiciary, the Justice Department and to the Federal Bureau of Investigation. I was interviewed by the F.B.I. on April 13, 1988 as part of a detailed background investigation. On May 25, 1988 I was interviewed by James Howard, Esquire, the Fourth Circuit member of the A.B.A. Standing Committee on the Federal Judiciary as part of the Committee's evaluation process. I was rated qualified by the Committee and, on July 6, 1988, I was nominated by President Reagan. The Senate did not act on my nomination prior to the end of the term. Thus, my nomination lapsed.

In early May of 1989, I was asked to appear for a series of interviews which were held at the Justice Department on May 23. On May 26, 1989, I was provided with this form, which I completed.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in a manner of an administrator with continuing oversight responsibilities.

In my opinion, it is best to respond to the question by expressing my views of the appropriate function of a United States District Judge.

I believe that the role of a United States District Judge is to provide the litigants in the cases before him or her with a fair and impartial forum to resolve the controversy which they have presented to the court. The judge must resolve the case presented by the parties in accordance with the law as expressed in the pertinent statutes, Constitutional provisions and applicable judicial precedents. It would not be appropriate to go beyond the dimensions of the parties' controversy to render a decision having greater effect than that warranted by the specific case being decided. However, a judge must apply the law and grant such relief, if any, to which a litigant may be entitled.

In those cases in which there is a question of statutory interpretation, it is the function of the judge to determine the intent of the legislature which enacted the statute. This should result in the judge's doing his best to ascertain what, in fact, the legislature intended by its enactment. The judge should not substitute his or her judgment for that of the legislature. The judge's role is not to design what, in his or her view would be the "best" possible statute that might have been drafted, but to interpret and apply the statute that was in fact enacted.

Above all, the United States District Judge must afford all litigants with a fair hearing and decision in accordance with the law and do all possible to justify the public's continuing respect for the federal judicial system.

STUART M. GERSON

Birth:	January 16, 1944	New York, New York
Legal Residence:	Maryland	
Marital Status:	Married	Pamela Edwina Somers
Education:	1960 - 1964	Pennsylvania State University B.A. degree
	1964 - 1967	Georgetown University Law Center J.D. degree
Bar:	1968	District of Columbia
Military Service:	1967 - 1971	United States Air Force
Experience:	1972 - 1975	Assistant U.S. Attorney District of Columbia
	1975 - 1980	Reed, Smith, Shaw & McClay Associate/Partner
	1980 - present	Epstein, Becker & Green Partner
Office:	1140 19th Street, NW, #900 Washington, D.C. 20036 202-861-0900	
Home:	Chevy Chase, Maryland 20815	

To be an Assistant Attorney General

RESPONSE TO QUESTIONNAIRE FOR NONJUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

   Stuart Michael Gerson

2. Address: List current place of residence and office address(es).

   Residence:
   Chevy Chase, Maryland 20815

   Office:
   Suite 900
   1140 19th Street, N.W.
   Washington, D.C. 20036

3. Date and place of birth.

   January 16, 1944
   New York, N.Y.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

   Married to Pamela E. Somers, a lawyer,
   who is Special Assistant to the
   Assistant Secretary of Labor for
   Employment and Training
   United States Department of Labor
   200 Constitution Avenue, N.W.
   Washington, D.C. 20210

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   College:
   Pennsylvania State University
   University Park, PA
   1960-64
   Bachelor of Arts in Political Science
   awarded in March 1964.

   Law School:
   Georgetown University Law Center
   Washington, D.C.
   1964-67
   Juris Doctor awarded in June 1967.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1964	Greyhound at the World's Fair, Inc. (seasonal employee in sales department).
1965	City of Long Beach, New York (seasonal employee in Highway Department).
1966	Retail Credit Corporation (seasonal employee as investigator).
1967	Center for Applied Linguistics (part-time employee on linguistics research project).
1967	Leva, Hawes, Symington, Martin & Oppenheimer (law clerk).
1967-1971	United States Air Force (military officer).
1972-1975	Assistant United States Attorney for the District of Columbia.
1975-1980	Reed Smith Shaw & McClay (associate and partner in law firm).
1978-Present	All Souls Housing Corporation (Director of church-sponsored non-profit housing corporation).
1979-1987	CHANGE-All Souls Housing Corporation (Director of coalition of church and community-based non-profit housing corporations).
1980-Present	Epstein Becker & Green, P.C. (partner in law firm).

Stuart M. Gerson
Response to Questionnaire for
Nonjudicial Nominees

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

United States Air Force
November 1967 - November 1971
Service Number: FV079343017
Honorably discharged with rank of Captain, having served as Counter-intelligence and Criminal Investigations Officer in Air Force Office of Special Investigations following commissioning from Officer Training School.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

In college I was selected an Outstanding Senior in the College of Liberal Arts and was elected to various campus organizations and honors groups including the Parmi Nous Society. I also won various awards for intercollegiate debating and public speaking.

In law school, I was winner of the Edward Douglas White award for moot court achievement.

In the service, I was a Distinguished Military Graduate of Air Force Officer Training School and later won various awards and decorations including the Air Force Commendation Medal.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Since its inception in 1972, I have belonged to the District of Columbia Bar and have served it in various committees and activities. At present, I am an elected director of the Bar's Litigation Section. Since approximately 1972, I have been a member of the American Bar Association and, for several years, have been a member/participant in the Judicial Conference of the District of Columbia. Since 1976, I have been a member of the Barristers, a District of Columbia society of lawyers.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

The only organizations to which I belong that lobby public bodies are the District of Columbia Bar and the American Bar Association. I also belong to the National Health Lawyers' Association, the Federalist Society and the Litigation Sections of the D.C. Bar and American Bar Association.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

The following is a list of the courts to which I am admitted and the dates of those admissions. There has been no lapse in any of these memberships.

Supreme Court of the United States	June 10, 1974
United States Court of Appeals	
DC Circuit	June 14, 1972
First	April 5, 1989
Second	Feb 21, 1979
Third	Jan 7, 1985
Fourth	April 30, 1984
Fifth	Oct 10, 1978 (Old) Nov 9, 1981 (New)
Sixth	Aug 25, 1982
Seventh	April 14, 1989
Eighth	Nov 18, 1986

Ninth	June 26, 1978
Eleventh	Nov 9, 1981
United States District Court	
District of Columbia	Feb 9, 1968
District of Maryland	Sept 12, 1985
District of Columbia Court of Appeals	April 1, 1972.

12. Published Writings: List of titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Most of my writings are in the form of briefs submitted to various courts and agencies. More-generally-public work includes:

Author of Superior Court Litigation section of the District of Columbia Practice Manual, published by the District of Columbia Bar, 1987.

Author of commentary, "The Burden of Metaphor," published in 1987, from a work derived from the proceedings of the National Conference on the Lawyer's Changing Role in Resolving Disputes, Harvard Law School. A copy of the draft of this commentary is attached at Tab A.

Interview published in Pharmacy News, Vol. 8, No. 2, Spring 1989. A copy is attached at Tab A.

Author of case commentary, "Are HMOs Liable for Acts of Independent Contractor Physicians," to be published by the American College of Physician Executives. Galley proof is attached at Tab A.

Co-author of article, "Hospitals Must Consider Antitrust Implications of Multi-institutional

Arrangements, published in Hospitals, March 1, 1982 at p. 82. A copy is attached at Tab A.

Author of chapter concerning the law of pre-trial detention in the History of the United States Court of Appeals for the District of Columbia Circuit in the Country's Bicentennial Year, a book published in 1976.

Also, pursuant to question No. 16, please find included within Tab A copies of the text of speeches I gave before the Republican Platform Committee on May 31, 1988, before the Women in Government Relations on October 5, 1988, and before the Mental Health Liaison Group on October 20, 1988.

13. Health: What is the present state of your health? List the date of your last physical examination.

My health is excellent. My last physical examination was conducted in April 1989.

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

15. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

2. whether you practiced alone, and if so, the addresses and dates;

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have

been connected, and the nature of your connection with each;

Because of my then-pending military service obligation, I was unable to clerk for a judge. Additionally, I never have been in sole practice. The offices with which I have been affiliated are:

Leva, Hawes, Symington, Martin & Oppenheimer, Washington, D.C., July - November 1967 (law clerk).

Office of the United States Attorney, Washington, D.C., 1972-1975 (Assistant United States Attorney).

Reed Smith Shaw & McClay, Washington, D.C., 1975-1980 (associate and partner).

Epstein Becker & Green, P.C., Washington, D.C., 1980 - Present (partner).

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Following my graduation from law school in June 1976, and my preparation for the bar the next month, and before embarking upon my military commitment in November 1967, I served as a law clerk at the Washington, D.C. firm then known as Leva, Hawes, Symington, Martin & Oppenheimer. In that capacity, I worked for a partner of the firm on the negotiation and implementation of bilateral treaties for airline routes and on administrative litigation at the Civil Aeronautics Board.

Between November 1967 and November 1971, I served as a military officer assigned to the United States Air Force Office of Special Investigations. My function was largely in the area of counter-intelligence and I served as a line commander.

During this period, I was not engaged in the active practice of law, although my legal training was certainly a material aspect of the judgments that I was called upon to make.

From 1972-1975, I was an Assistant United States Attorney for the District of Columbia. In that capacity, I represented the United States in the trial of numerous cases, most of them criminal, in the United States District Court for the District of Columbia, and in the writing of briefs and presentation of oral arguments in both criminal and civil cases in the United States Court of Appeals for the District of Columbia Circuit and the District of Columbia Court of Appeals.

Among the posts that I held in this capacity were Chief of the Major Violators's Section (a component charged with prosecutions of repeat offenders), senior trial attorney in U.S. District Court, and deputy to the Chief of the Appellate Division. Among the areas of my emphasis were the prosecution of political and public corruption cases and major narcotics cases, and some of these cases are described with particularity in response to question 16, infra.

From 1975-1980, I was employed by the law firm of Reed Smith Shaw & McClay in Washington, D.C., first as an associate and then as a partner, where I served as counsel, principally to large corporations, in litigation before the federal courts and administrative agencies. As in any such large practice, I often served with teams of lawyers and eventually as lead or sole counsel in major cases.

Among the areas of greatest emphasis while I was at Reed Smith were the defense of antitrust and trade regulation cases and labor and employment cases on the management side. Some of these cases are described with particularity in response to question 16, infra.

From 1980 to the present, I have been a partner resident in the Washington, D.C. office of the multi-city law firm of Epstein Becker & Green, P.C.

I am the head of litigation for the firm and, in that capacity, have been engaged in a national law practice, largely in the federal courts and administrative agencies. I both take an active leading part in a large variety of major cases, and also review and supervise the work of others, as well as conduct various training activities, which parallel exercises I conduct as a faculty member of the National Institute for Trial Advocacy. I represent both large corporate clients in many fields and many smaller entities, particularly related to alternative healthcare delivery.

Among my practice areas are antitrust and trade regulation, labor and employment discrimination, products liability, trade secrets and federal administrative matters. I also deal with white-collar criminal cases, particularly in the fraud and securities areas, and with matters of federal election law. Some of my cases in these areas are described with particularity in response to questions 16-17, _infra_.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

From 1972 through the present, my practice has involved frequent court appearances. While an Assistant United States Attorney those appearances were on a virtually-daily basis. In more-recent years, my cases are larger and take longer to develop. Hence, I am in court less, although still frequently.

2. What percentage of these appearances was in:
   (a) federal courts;
   (b) state courts of record;
   (c) other courts.

While an Assistant U.S. Attorney all of my appearances were in federal courts. In private practice, approximately 70 percent of my cases have been in federal court, and the remainder have been divided among state courts, federal administrative agencies and private arbitration and disputes resolution proceedings.

3. What percentage of your litigation was:
   (a) civil;
   (b) criminal.

While an Assistant U.S. Attorney, about 85 percent of my cases was criminal and 15 percent civil. In private practice, about 90 percent of my cases has been civil and about 10 percent criminal.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Although I have no record from which a precise number can be determined, I note that, while in private practice (up through the present), I have tried to verdict approximately 4-5 cases per year. While an Assistant United States Attorney, I tried to verdict more than that number per month. Additionally, I present or argue at least several cases per year in various United States Courts of Appeal (and occasionally in the Supreme Court). While an Assistant United States Attorney, I argued before the D.C. Circuit or D.C. Court of Appeals with a frequency ranging from monthly to weekly. The total of all these cases, I am sure, is more than 100.

While an Assistant U.S. Attorney, I was sole counsel in approximately 90 percent of my cases and co-counsel in the rest. In private practice, I have been sole counsel approximately 20 percent of the time, chief counsel approximately 70 percent of the time and associate counsel for the rest.

5. What percentage of these trials was:
   (a) jury;
   (b) non-jury.

Approximately one-third jury.

Stuart M. Gerson
Response to Questionnaire for
Nonjudicial Nominees

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Ocean State Physicians Health Plan, Inc., et al. v. Blue Cross & Blue Shield of Rhode Island, United States District Court for the District of Rhode Island, Civil Action No. 86-0598B (tried October 1987 before Boyle, J.); post-trial proceedings reported at 692 F. Supp. 52 (D.R.I. 1988); on appeal to the United States Court of Appeals for the First Circuit, No. 88-1851 (argued April, 1989), now pending decision). Co-counsel were Thomas E. Lynch, Esquire, Lynch & Greenfield, 203 South Main Street, Providence, RI 02903, (401) 274-6400, and William G. Kopit, Esquire, Epstein Becker & Green, P.C., 1140 19th Street, N.W., Washington, D.C. 20036, (202) 861-0800. Opposing counsel were Steven E. Snow, Esquire, and James E. Purcell, Esquire, Partridge, Snow & Hahn, One Old Stone Square, Providence, RI 02903, (401) 456-1200.

This is a nationally-noted case in which I was lead counsel for the plaintiff health maintenance organization which brought suit under Sections 1 and 2 of the Sherman Antitrust Act and state law, against an entrenched health insurer that a jury found used its market power to exclude competition with a variety of tactics including the imposition of "most-favored-nations" contracts. The jury returned a multi-million-dollar verdict in favor of our client, but the district judge vacated the award. The case is now on appeal to the First Circuit whose decision the permissible scope of horizontal action in the critical healthcare industry.

2. Bowen v. American Hospital Association, et al., the ultimate disposition of which by the Supreme Court is reported at 476 U.S. 610 (1986). The case below was American Hospital Association v. Heckler, United States District Court for the Southern District of New York No. 83-Civ. 2638-CLB (Final Judgment entered on June 11, 1984 by Brieant, J.). On appeal, the case was United States Court of Appeals for the Second Circuit No. 84-621 (2d Cir. December 27, 1984). The case was governed in the Second Circuit by the related case of United States v. University Hospital, 729 F.2d 144 (2d Cir. 1984), in which I was lead counsel for the amicus curiae American Hospital Association.

Co-counsel was William G. Kopit, Esquire, Epstein Becker & Green, P.C., 1140 19th Street, N.W., Washington, D.C. 20036, (202) 861-0900. Opposing counsel in these litigations were Charles J. Cooper, Esquire, then Assistant Attorney General of the United States, and now of McGuire, Woods, Battle & Booth, 1627 I Street, N.W., Suite 1000, Washington, D.C. 20006, (202) 857-1700, and Charles Fried, then Solicitor General of the United States, Department of Justice, Washington, D.C. 20530, and now of Harvard University, Cambridge, Massachusetts. Plaintiffs in companion litigation were represented by Benjamin W. Heineman, Jr., Esquire, then of Sidley & Austin, and now of General Electric Corporation in Connecticut, and Vincent F. Prada, Esquire, Sidley & Austin, 1722 I Street, N.W., Washington, D.C. 20006, (202) 429-4000.

These were the so-called "Baby Doe" cases, and I was the lead trial and appellate attorney (and counsel of record in the Supreme Court) for the American Hospital Association and various hospitals which successfully challenged the federal government's attempts, under the color of Section 504 of the Rehabilitation Act, to intervene in the medical care decisions made as to infants with birth defects. On grounds of federalism and congressional intent, we prevailed at every level of this signal litigation. However, at the same time (as is discussed in response to question No. 17, infra, we also were able to act productively to assure the care of such infants through the development and support of the federal Child Abuse Amendments of 1985).

3. United States v. The M.J. Kelley Co., Edward W. Brown, III, et al., United States District Court for the Middle District of North Carolina Nos. CR85-215-01-04-G, tried to a jury before Ward, J. in 1986. Opposing counsel was David B. Smith, Esquire, Assistant United States Attorney, P.O. Box 1858, Greensboro, NC 27402. Other attorneys for the defense were: Robert E. Zaytoun, Esquire, Kirby, Wallace, Creech, Sarda & Zaytoun, 1020 Washington Street, Raleigh, NC 27605 (919) 782-9322; Louis C. Allen, III, Esquire, Greensboro, NC 27402 (919) 273-1797; and H. Marshall Simpson, Esquire, Walker, Ray, Simpson, Warren & Blackmon, 220 North Eugene Street, Greensboro, NC 27401.

This was a government procurement case relating to a pipeline project at Guantanamo Bay Naval Station in Cuba. I successfully represented an individual defendant, Brown, before the jury, and took the lead for all defendants in arguing the legal points in the case to the Court. This was particularly important because the case turned on an interpretation of federal government contracting law that I raised and urged upon the Court.

4. Silver v. NL Industries, United States District Court for the Southern District of New York No. 82 Civ. 6875, reported at 118 L.L.R.M. 2695 (SDNY 1985, Haight, J.). Opposing counsel was Jeffrey E. Silver, Esquire, 34 Stonebridge Road, Wilton, CT 06897. An individual defendant in the case was represented by Richard L. Bond, Esquire, and Peter Goldstein, Esquire, Dorsey & Whitney, 350 Park Avenue, New York, NY 10022, (212) 415-9200.

This case was brought under ERISA and tort, and is an often-cited precedent as to so-called "wrongful discharge." After several years of litigation, the trial court granted the corporate defendant's (I was its sole counsel) motion for summary judgment, clarifying the law of employment-at-will and harmonizing federal law with New York State law.

5. In re FTC Line of Business Report Litigation and In re FTC Corporate Patterns Report Litigation, aspects of which are reported, among other places, at 595 F.2d 685; 1978-2 Trade Cas. (CCH) ¶62,152 (D.C. Cir. 1978). Trial court proceedings were held before Flannery, J., United States District Court for the District of Columbia. Principal opposing counsel was Gerald P. Norton, Esquire, then General Counsel of the Federal Trade Commission, and now of Pepper, Hamilton & Sheetz, 1300 19th Street, N.W., Washington, D.C.

20036, (202) 842-8103. Among the scores of counsel on my side of the case were: Steven S. Rosenthal, Esquire, Morrison & Forster, 2000 Pennsylvania Avenue, N.W., Washington, D.C. 20006, (202) 887-1500; John M. Wood, Esquire, Reed Smith Shaw & McClay, 1200 18th Street, N.W., Washington, D.C. 20036, (202) 457-6100; Mark A. Jacoby, Esquire and Salem M. Katch, Esquire, Weil, Gotshal & Manges, 767 Fifth Avenue, New York, NY 10022, (212) 758-7800; and Leslie Jacobs, Esquire, of Thompson, Hine & Flory, Cleveland, OH.

This was the first major multi-district litigation on which I worked and it involved challenges raised by hundreds of large American corporations (my firm represented over 200 of them), under the confidentiality provisions of the Census Act and under the Administrative Procedure Act, to massive FTC attempts to collect value-of-shipments and other production data. I was a member of a multi-attorney team and, at an early stage in my career at the private bar, was allowed to argue the dispositive motions on behalf of the corporate plaintiffs. Our efforts led to some scaling back of these programs, which ultimately were upheld by the Court of Appeals and Supreme Court, only to be abandoned as intrusive in subsequent administrations.

6. United States v. Campbell Hardware, Inc., David E. Thompson, Inc., et al., United States District Court for the District of Massachusetts Criminal No. 78-460-F, tried in 1979 before McNaught, J. Opposing counsel were Eugene Hanson, Esquire and Rebecca Meiklejohn, Esquire, of the Antitrust Division of the Department of Justice, New York Regional Office, Room 3630, 26 Federal Plaza, New York, NY 10007, (212) 264-0666. Other defendants were represented at trial by Richard E. Bachman, Hale, Sanderson, Byrnes & Morton, Ten Post Office Square, Boston, MA 02109, and Jerry E. Benezra, 106 W. Foster Street, Melrose, MA 02176.

I was sole trial counsel for the defendant Thompson, who was successful before the jury in defending against an indictment brought under Section 1 of the Sherman Antitrust Act relating to the well-known architectural hardware bid-rigging scandal in New England. When the case began, there were over 30 defendants, all but 3 of whom pleaded guilty or nolo contendere, and most of whom testified against my client at trial. The jury's acceptance of my client's insistence of innocence was, therefore, a significant and satisfying result.

7. Hamilton v. Motorola, Inc., et al., United States District Court for the District of Columbia Civil Action Nos. 75-0232, 75-1449, 75-1886, tried before Bryant, J. Principal opposing counsel were Paul Martin Wolff, Esquire, Williams & Connolly, 839 17th Street, N.W., Washington, D.C. 20006 (202) 331-5000, and Pierce O'Donnell, Esquire, Kaye, Scholer, Fierman, Hayes & Handler, 2121 Avenue of the Stars, 21st Floor, Los Angeles, CA 90067, (213) 552-6400.

This was a complex, multi-million dollar, products liability/wrongful death case, involving automobile design and operation, and resulted in an extremely long and difficult jury trial in which my client, the deep-pocket defendant, was fortunate enough to prevail. I was sole counsel for this defendant, having entered the case with the threat of default hanging over my client because of its previous malfeasance in discovery. This difficulty, added to complex engineering and legal questions made for a hard-won and significant result.

8. United States v. Scott, et al., 516 F.2d 751 (D.C. Cir. 1975), reversing and remanding case (following government's successful appeal) to Waddy, J., of the United States District Court for the District of Columbia, where convictions were then obtained upon trial. Co-counsel was Roger Adelman, Esquire, then an Assistant United States Attorney, and now of Kirkpatrick & Lockhart, 1800 M Street, N.W., South Lobby, 9th Floor, Washington, D.C. 20036, (202) 778-9270. Among the opposing counsel in the case were David E. Schreiber, Esquire, 1503 21st Street, N.W., Washington, D.C. 20036 (202) 466-3044, and John A. Shorter, Esquire, who is not currently in the practice of law.

This was the last case I worked on while a federal prosecutor and it was one of the most interesting. The defendants were the principals of a major interstate narcotics ring, and the prosecution was the first Justice Department case brought under the amended federal wiretap law that followed the Supreme Court's decisions in Chavez and Giordano. I was co-counsel at trial and on appeal. (The case ultimately was affirmed by the Supreme Court after I left the government.) My principle responsibilities in the case were dealing with the wiretap authorization and minimization issues that led the district judge twice to suppress evidence, only to be reversed by the Court of Appeals. The witnesses I presented included the former Attorney General of the United States and various other high-ranking officials, and the case has become an important precedent.

9. *United States v. Brewster*, 506 F.2d 62 (D.C. Cir. 1974); convictions entered on remand before Hart, J. of the United States District Court for the District of Columbia in 1975. Opposing counsel were Edward Bennett Williams, Esquire and Paul Connolly, Esquire (both now deceased) of Williams & Connolly of Washington, D.C. On appeal, Mr. Williams was assisted by Earl C. Dudley, Jr., Esquire, then of Williams & Connolly, and now of Nussbaum, Owens & Webster, 1 Thomas Circle, Washington, D.C. 20005, (202) 833-8900.

The companion case to *Brewster* was *United States v. Anderson*, 509 F.2d 312 (D.C. Cir. 1974). Hart, J., also was the trial judge. Opposing counsel was Walter J. Bonner, Esquire, 900 17th Street, N.W., Washington, D.C. 20006, (202) 452-1300.

These cases were landmarks in the creation of standards for governmental ethics relating to public officials. Daniel Brewster was a sitting United States Senator who was prosecuted for receiving bribes and gratuities in violation of 18 U.S.C. § 201, and ultimately was convicted of three felonies. Anderson was a lobbyist was the conduit for the unlawful payments made. I assisted at the trial level and then became lead counsel for the United States in these cases. Arguing them on appeal and taking them through Brewster's conviction on remand (Anderson's initial convictions were upheld on appeal).

These were the first major prosecutions under the amended federal bribery laws, and we were able to convince the Court of Appeals to uphold the constitutionality of the statue and convictions obtained thereunder. This is a much-cited precedent.

10. *United States v. Myles*, Superior Court of the District of Columbia No. 12162-74, tried before Halleck, J. on June 10, 1974. Opposing counsel was William Taylor, Esquire, then of the District of Columbia Public Defender's Office, and now of Zuckerman, Spaeder, Taylor & Kolker, 1201 Connecticut Avenue, N.W., 12th Floor, Washington, D.C. 20036, (202) 778-1800.

This was a particularly brutal murder case in which I served as sole prosecutor for the United States. The defendant was a teenager and, therefore, the case was particularly sensitive. Most of the evidence was circumstantial and the case was difficult to present. Working with top-flight police investigators, we were able to piece together what I believe was the most effective and affecting trial presentation that I have ever made to a jury. The case was fraught with legal issues but the jury's guilty verdict was upheld throughout.

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Virtually all of the matters with which I deal involve actual or potential litigation. However, among the activities I consider significant which did not progress to trial are the following:

1. During 1986 through 1988, I represented hospitals throughout the United States challenging the Medicare reimbursement rules of the Department of Health and Human Services as to labor room delivery days and malpractice insurance. While the rights of various of these hospitals were vindicated in lawsuits and appeals (regarding the issue of retroactive rulemaking) in some of which I was counsel, the ultimate disposition of these cases, involving many millions of dollars and hundreds of institutions, came as the product of negotiation. Representing both individual hospitals and state and national trade associations, I undertook many of these negotiations with representatives of the Healthcare Finance Administration and ultimately served on the committee of counsel that resolved these cases nationally. The settlement, while large, was extremely beneficial to the hospitals and was consistent with the public interest in assuring access to medical care.

2. From approximately 1985 through the present, I have represented an entity in Scranton, Pennsylvania known as Allied Services for the Handicapped, Inc. ("Allied"). When I was engaged, Allied and its management were the subject of a federal grand jury investigation relating to allegations of Medicare and Medicaid fraud. Along with other attorneys in my firm, we were able to assist the corporation in averting its exigent problems, in part by overseeing the removal and

replacement of certain key corporate officers, the election of a new board of directors and the alteration of company policies. Then, with the company still in precarious financial condition, we succeeded in negotiating favorable resolutions to pending reimbursement cases at the administrative level. The upshot of all of this is that Allied has survived and, in restructured form, continues to provide valued services in its region in the field of rehabilitative medicine.

3. In the wake of the Baby Doe cases, described supra, the federal government was left without any effective lever to assure that handicapped infants were not denied medical care. Although my activities led to our clients' success in the lower courts and in the Supreme Court, I believed it incumbent upon hospitals not simply to rest upon the federalism arguments that prevailed, but to close the circle by assuring that necessary care was being provided in the states. This idea was accepted and advanced by an enlightened General Counsel of the American Hospital Association and, along with him and his staff, I was proud to work with Members of Congress in drafting, negotiating and supporting the ultimately-passed Child Abuse Amendments of 1985.

4. I have been involved in the settlement of a number of large class-action cases brought by women and minorities under federal and state civil rights laws. An example of these cases is one concluded in 1987 on behalf of a large Texas bank holding company, Texas American Bancshares, Inc. Although there were years of litigation leading up to the final settlement of the case, that settlement, under which the defendant admitted no liability, provided for effective minority entry into employment and collaterally guaranteed higher-educational opportunities for minorities by setting up a community-based scholarship system in Tarrant County, Texas.

5. Asbestos claims are among the most rapidly-expanding categories of case filings. Even where liability is no issue, the processing costs of these complex cases generally exceeds the amounts settled upon plaintiffs. Often these cases also serve as virtual

annuities for lawyers. On behalf of several manufacturers of refractory materials whom I have represented for over a decade, and who are parties to scores of such suits, I have supervised the creation of a product-identification system and central informational repository which have led to the prompt disposition of many of these cases at very low cost.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   Upon the termination of my employment with the law firm of Epstein Becker & Green, P.C., I am, by virtue of the firm's employment agreement, entitled to the payment (in installments over two years) of $50,000 which has accumulated for a period of years in a deferred income account within the firm. This will represent the payment of an existing contractual obligation, not a future benefit. Additionally, upon my separation from Epstein Becker & Green, P.C., I shall be repaid the $50,000 capital I have placed in the firm and also shall be paid several debts (totalling approximately $25,000) owed me by the firm. The firm also has reserved the right, to maintain its cash flow, to repay these amounts periodically over two years. Again, these are existing obligations, representing funds I have paid in or lent, and such payments do not represent future compensation.

   Besides the foregoing, I have no anticipated receipts, stock, options, uncompleted contracts and other future benefits which derive from relationships of the type cited in the inquiry.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   With respect to matters involving my former law firm and clients, I shall seek and follow the advice of the Department's Designated Agency Ethics Official about disqualification. I understand that, in such cases, the Department applies the disqualification standards recommended by the Administrative Conference of the United States.

With respect to my investments, I shall recuse myself, or shall seek an appropriate waiver of disqualification under 18 U.S.C. § 208, from consideration of any matter involving any business or other entity in which I have a financial interest subject to my control.

As to the foregoing, I intend to follow whatever advice I am given by the Department's Designated Agency Ethics Official as to the disposition of assets or other avoidance of conflicts.

The Department has advised me that it cannot identify any significant category of litigation or financial arrangements that is likely to present potential conflicts or the appearance thereof.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Financial Disclosure Report attached hereto at Tab B. Although several small holdings reflected therein have been disposed of and several holdings have been added since the completion of that document, the Report accurately reflects my income during the referenced period. The newly-acquired assets, which have yet to produce any income, are reflected in the attachment to the financial net worth statement submitted in response to question 5, infra.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attachments at Tab C.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Since early 1975, I have been the attorney for Senator John Heinz of Pennsylvania. In connection with his campaigns for the United States Senate in 1976, 1982 and 1988, I provided Senator Heinz with legal advice relating to election-law compliance and also advice concerning public debating and policy issues within the sphere of my competency. I held no formal position in any of these campaigns.

During the 1986 election cycle, while Senator Heinz was Chairman of the National Republican Senatorial Committee, I was retained by the Committee at his behest to furnish legal advice relating to election-law compliance to various Republican candidates for the United States Senate. I functioned strictly as a lawyer and held no position in any of these campaigns.

During the 1988 Presidential campaign, I served as an unpaid volunteer advisor to the campaign of now-President Bush. My principal responsibilities related to preparation of the candidate for multi-candidate debates, research on various substantive issues, and participating as a surrogate speaker and representative of the campaign before public groups on matters including national health policy, economics and law.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

It is my strong belief that every lawyer should meet or exceed the guidelines relating to Canon 2. Throughout my career, I often have counseled impecunious persons (including victims of racial, handicap and sex discrimination, and sufferers of AIDS) as to their legal rights, and have represented indigents in assigned criminal cases in Federal Court. In the past year, the most-substantial _pro bono_ activities in which I have been involved have been:

A. The representation of the members of the CHANGE-All Souls Housing Corporation, a church-related, community-based, non-profit organization of which I am a past director, in the financing and conversion of a condominium residence in the inner city of the District of Columbia. This is the latest successful effort of this group to build or rejuvenate urban housing and make it available at low cost to minorities and others. I also provide legal and economic advice to the Tenants Association of Columbia Heights Village, another CHANGE-All Souls project, in its dealings with utilities, property management and the local government. I spend several hundred hours a year on this work.

B. The representation of the low-income parent of a terminally-ill, handicapped child in an action against his health-insurer who the plaintiff believed acted discriminatorily on the basis of race and economic condition when it ordered the child removed from care within the family home. I served as lead counsel in the action brought in the United States District Court for the District of Maryland, spending approximately 70 hours on the matter, and also worked with other volunteers in my law firm in presenting the case.

c. Continuing representation, without charge, of the Anti-Defamation League of B'nai B'rith and the American Jewish Committee in actions instituted under the color of federal election law by a well-known organization espousing bigotry and desirous of limiting the right and ability of my clients to expose these racist and anti-Semitic individuals. I have spent approximately 100 hours per year on these matters.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I belong to no organization that discriminates in any such way. Since 1977, I have been a member of the University Club of Washington, D.C. Several years ago, following a plebescite of the members, the University Club altered its policies and began to admit female new members, a change which I openly supported and still support.

Commentary on Chapter 1

The Burden of Metaphor

Stuart M. Gerson

Nostalgia is a common reaction to many seemingly intractable problems of the present, especially those problems that appear to mark the deterioration of our institutions. Often, however, the past for which we long was not a great deal different from the present which we bemoan. Our wishful thinking only seems to make it so. It is in this vein that Professor Galanter addresses the so-called "litigation explosion." He suggests that the data available do not support the conclusion that we are now confronted with a sudden and uncontrollable expansion of institutionalized disputing. In fact, Americans may be no more litigious now than they have always been. And, though we may be disputatious, we are not appreciably moreso than other peoples, for example the Japanese, who are often held up to be paradigms of restraint. It thus might appear that the impact of litigation upon American society is one of those subjects like respect for parental authority about which we seem to have no generational memory.

Professor Galanter ascribes our great current concern with litigation to the symbolic presence of lengthy and complex cases that spur the discourse of an elite group of lawyers and scholars whose attention is confined to the federal courts. This elite is able to gain publicity for this complex and growing federal litigation, much of which is appellate in nature and generated by the same group that is decrying the situation. This narrow focus has led to the assumption that what happens at the upper levels is typical of the situation throughout the judiciary. Instead, Galanter proposes a "contextual reading" of the landscape of disputes that contradicts the thesis of the erruption of litigation and its supposed deleterious effect. However, the context described may not be broad enough to allow an appropriate redirection of policy.

In the proffered context, contemporary American disputing is seen as neither explosive nor disruptive. To the contrary, it is held to be the evolutionary adaptation to increasing knowledge of the causes of injury in a technological society and the desire to apply communal resources to supply remedies. Improved communications and enhanced awareness make formal legal structures more accessible, and more useful than the non-judicial modes that might have been used in the less centralized, less urban society of earlier times.

Increasingly dominant,court-based litigation is therefore said to be desirable because it has longstanding roots in American society and because its function as a matrix for negotiated results makes it responsive to the needs and inputs of the parties. The upshot of this view is to counsel great caution in dictating any alteration in the prevalent mechanisms of disputes resolution, at least until better scholarship documents a compelling reason to do otherwise. While this view accurately encompasses the history and desired role of modern litigation, its limitation is based upon its corollary that the litigation explosion phenomenon is unsatisfactorily documented and that this demonstrated failure is crucial.

However, "explosion" may not be the problem with modern disputes resolution, although this is still open to contention. Whether litigation has grown radically and suddenly, or whether current documentation can show only an evolutionary and predictable increase, there persists a societal difficulty that is far more than symbolic or confined to the experience of an elite. The real problem has to do with the allocation of presently-constricted resources among the many areas that compete for them. Assignment of sufficient resources to allow court-centered litigation to function in an optimal manner may impede other societal interests. An insufficient allocation will not allow responsive operation of the courts.

Professor Galanter describes the proliferation of litigation as beneficial because it has marked the intervention of a disinterested decisional or intermediary element, the court, in place of more arbitrary traditional forms. Thus, disputants should be able to resolve their grievances under the governance of previously-established principles rather than according to whim or caprice.

Curiously, there is a certain nostalgia attendant to this description. In harkens back to the early part of this century when sociologists such as the German, Max Weber, hailed the onset of large, centralized institutions as a liberating force. This thesis is predicated upon the idea that authority never decreases; it merely changes form. Accordingly, the application of rational, principled authority by a centralized entity, e.g., the national government or even a large corporation, is preferable to the imposition of arbitrary authority by traditional institutions, e.g., the church or a boss. This philosophy enjoyed an exalted position as the size and role of government increased in American life. However, two related conditions have created serious doubt as to whether we can or should continue to give primacy to the centralization postulate, and these conditions also affect the way we should consider the issue of disputes resolution.

In the first place, our governmental institutions, including the courts, have reached a size and volume of activity where their ability to respond effectively in any given instance is questionable. In the second place, and even more importantly, even assuming that our institutions can function effectively at their present (or, as many would prefer, greater) size, it is clear that American society cannot provide the economic resources that might allow them to do so. Whether or not one employs such catch-phrases as "zero-sum game" or economic "triage," in discussing resource allocation, it is fair to say that the conduct of successive political administrations of different philosophical bent, and at all levels of American government, has been relatively consistent in constricting the provision of services. And where government has looked to expand or redirect its resources for social institutions, it has tried to stimulate a troubled economy, not to expand or enhance present administrative functions. Thus, like it or not, it appears that we shall be practicing the politics of scarcity for the forseeable future, and it is in this context that we ought to be considering the impact of litigation.

With this predicate, the more accurate counting of disputes, although desirable from the point of scholarship, is unlikely to answer the question of how many disputes administered by the courts are too many. Indeed, we may not even be able to afford to do the counting, as the National Center for State Courts, which only recently has been able to publish its 1977 Annual Report, is finding. And many, especially among frequent disputers, will not be able to await better data before adjusting their litigating methods. In short, to confine our debate to the proposition of whether there is in fact a litigation "explosion" will ill serve us. That metaphor is simply not helpful, and in contradicting the myth of it that is the launching point for so much of the discussion of legal policy, Professor Galanter does a great service.

This is not to say that the study of court data and other litigation-related statistics should not continue, but that the focus ought to be less on determining pure volume than in seeking to describe substance. For example, for the fiscal year ending June 30, 1982, the Administrative Office of the United States Courts has reported that the federal district courts had disposed of 6.5 percent more civil cases than in the previous year, but that pending cases at the end of the period had risen by 8.9 percent. 1/ The disposition and pending figures for criminal cases are also up, by 5.5 and 5.1 percent respectively. 2/ In the civil area particularly, these data show great numerical growth since the mid-1970's, but an annual growth that is significant but reasonably consistent with the additional resources assigned to handle it. If this is an explosion, it is a controlled one. But the federal problem is one of more than gross numbers.

The troublesome element of this number is the protracted case. For the 1971-1972 fiscal year, the Administrative Office reported that 59 of 18,780 completed trials had lasted more than 20 court days. [3] For 1981-1982, the number of such trials had grown by 178 percent (164 out of 21,077). [4] The amount of cases coming to trial has grown, but not explosively. However, the number of complex trials has increased disproportionately. These are, of course, the kind of high-visibility cases that Professor Galanter has described as the basis for most of the jeremiads about modern litigation, but they affect much more than the sensibilities of a commenting elite.

These protracted cases back up court calendars and lead to increased costs for private civil litigants and for the public whose taxes fund the civil and criminal cases of the government. The presence of such cases can only discourage smaller but no less meritorious claims from being filed. Deserving plaintiffs are denied needed compensation for long periods, and defendants often are forced to spend more money litigating good-faith defenses than the amount required to pay a typical federal judgment. Moreover, in analyzing the effect of such cases, one must realize that most of them do not show up in the trial statistics because, like all other cases, most of the the complex ones are settled without trial. However, the discovery and other court-administered proceedings attendant to them are still of profound consequence. So too are the administrative proceedings, e.g., in the employment discrimination and occupational health areas, that often are the spawning grounds for court litigation. Although these can be major disputes in themselves, they do not appear in most statistical assessments. [5]

Prevalent case types have their ebbs and flows, but it is no doubt useful to look to certain categories of hazardous substances/personal injury cases because, as Professor Galanter correctly suggests, the growth of modern litigation parallels the increase in public awareness of the causes of injury and a desire to mobilize social resources to deal with the problem. The assessment of such cases ought to tell us much about whether the court-based system of litigation is adequately fulfilling the role that was foreseen for it. Much evidence suggests that it is not.

In a single federal district, there were in 1981 over 3,000 individual plaintiffs in cases involving allegations of asbestos-induced injury. [6] One company, much in the news, estimated that it alone would face another 32,000 of these cases, with an average individual disposition cost of more than $40,000. [7] This case matter is not unique; there are others of similar impact, and they presage still further cases deriving from the mesothelioma and other cancers that are in the pre-insidious stage for many workers. At present, defendants pay approximately 70 cents in litigation costs for each dollar that is ultimately paid to a claimant. This leads back to what should be the fundamental contextual issue in evaluating modern litigation: irrespective of numbers (or metaphors of explosion), are our scarce resources being allocated in a societally-beneficial way when we litigate cases in the traditional manner? As to hazardous substances cases, the answer appears to be in the negative.

The impact of inefficient disputes resolution upon the deserving individual plaintiff is self-evident. The impact upon the usually-corporate defendant is, perhaps, more obscure. It has been a shibboleth that delay generally benefits the defendant who expects to pay a claimant. After all, the predictive loser retains the time value of his money and the economically-pressed plaintiff might feel compelled to take less than he could have gotten through a trial. However, when the defendant is a frequent participant in litigation, this advantage is elusive.

For one thing, the available data show that a consistently-increasing number of plaintiffs is able to secure the services of a consistently-increasing number of lawyers and that the incentives are sufficient for both groups to engage in protracted litigation. [8] More significantly, to the frequent defendant or his insurer, the most important economic variable is the cost of processing litigation, not the ultimate payout. The repeat player is involved in enough cases of similar type that he can predict both how many cases he is likely to confront and what his average liability might be. This amount can then be assigned to the cost of good or services sold and over time paid out. Assuming a consistency of responsible corporate operation, these payouts are predictable but are not substantially controllable; they are a constant. However, the processing cost of the repeat player's litigation is just the opposite: it is now relatively unpredictable, but in altered modes of disputes resolution it could be controlled.

The corporate defendant sees that the mechanisms of traditional litigation have grown vastly in size and expense, but without providing any of the economies of scale upon which it would predicate its own industrial expansion. This is more than a conceptual failure. At a time when the American economy is beset by diminished production, diminishing productivity and tragic levels of unemployment, the corporations that are often the repeat players in litigation are compelled to assign increasing portions of their operating budgets to case processing. These litigation expenses are unproductive: they yield no new plants and equipment, or jobs, or research that might improve products, all of which are vitally needed by the society. This returns us to the contextual framework for evaluating litigation, and demands that we confront the question of the societal and economic loss of resolving at least certain categories of disputes by traditional means.

Much of this evaluation already has been undertaken, albeit in a less-than-scientific manner, and also acted upon. There are a number of legislative proposals aimed at several high-volume case types and designed to create national pools for the distribution of funds and administrative mechanisms for claims processing. Additionally, as the conference that has led to this volume demonstrates, many frequent litigators are voluntarily undertaking novel alternatives to traditional methods of resolving disputes. They should be encouraged.

The verified data that we now have available demonstrate that most cases are now settled without a trial. Moreover, while the courts in which these cases are filed might spur many of these cases towards resolution by their intermediate activities, few of these "bargaining counters" are merits-related. Courts therefore do not often perform their essential normative function. Instead, most litigation events are directly related to negotiation, and here many of the parties themselves are better equipped by skill and training than the lawyers and judges who conduct and control traditional litigation. Where such parties can adopt methods that can lead to more satisfactory and economical litigation outcomes, and even where alternatives might be mandated in certain voluminous case categories where issues of liability are reasonably well-settled, the vast majority of litigants (in both civil and criminal cases) will still be free to conduct their formal disputes in traditional ways, and more swiftly.

The hyperbole attached to the "litigation explosion" debate is counterproductive. It is without scientific basis and largely misses the point. The most objectionable feature of the linear projections of doom based upon the explosion metaphor is the apparent assumption that rational forces cannot act in a temporate manner to ameliorate the problem. The judicially-oriented method of disputes resolution is deeply ingrained in our historical experience and will continue to respond to societal needs in most cases. However, we can presently denominate certain areas where the introduction of alternative means will serve both the interests of the direct participants and the needs of the larger society which must carefully apportion its resources.

NOTES

1/ *Annual Report of the Director of the Administrative Office of the United States Courts for the Twelve Month Period Ended June 30, 1982* at 3.

2/ *Id.* at 5.

3/ Granelli, *Long Trials Play Havoc With Courts*, Nat'l L.J., Dec. 27, 1982, at 10, col. 1.

4/ *Id.*

5/ Thus, an accurate data source must include administrative as well as judicial cases and also should consider the impact of increasing multi-party litigation, which to a defendant and a court may have the same operative effect as multiple lawsuits. In addition, it is unwise to exclude from any data base concerning the frequency of corporate litigation personnel-related disputes. With the passage of statutes such as Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*, and the Age Discrimination in Employment Act, 29 U.S.C. §§ 621, *et seq.*, and the decisions in such cases as *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974), and *Barrentine v. Arkansas-Best Freight System, Inc.*, 101 S. Ct. 1437 (1981), holding that collective bargaining agreements cannot serve as a bar to litigation under anti-discrimination statutes, the face of American labor law has been transformed. A significant part of any corporation's litigation involves administrative and judicial disputes with its present, former or would-be employees.

6/ See *Hardy v. Johns-Manville Sales Corp.*, 509 F. Supp. 1353, 1354 (E.D. Tex. 1981).

7/ 175 Daily Labor Rep. F-1 (BNA September 9, 1982).

8/ The data concerning federal court litigation are included in the Annual Reports of the Director of the Administrative Office of the United States Courts. As Professor Galanter accurately notes, there is no way to verify whether the federal experience mirrors that of the states. In November, 1982, the National Center for State Courts published a document compiled by its National Courts Statistics Project entiled *State Court Caseload Statistics: Annual Report 1977*. Given the facts that there is no previous such volume to serve as a point of reference, that less than half of the population is represented in the statistics and few states have provided complete data, and that five years of state court experience have elapsed that is unreported, the 1977 Report is of limited utility. Nevertheless, state filings appear to have increased substantially in comparison to the sketchy data that are available for earlier years. Additionally, the end-of-the-year figure for cases pending is analagous to the increase in pending federal cases for the same period. The 1977 Report does not consider the effect of protracted cases; the National Center is presently attempting to secure a grant to study the matter.

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SYNTEX

PHARMACY NEWS

DISTRIBUTED AS A
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TO THE NATION'S
PHARMACISTS

PUBLISHED BY
SYNTEX
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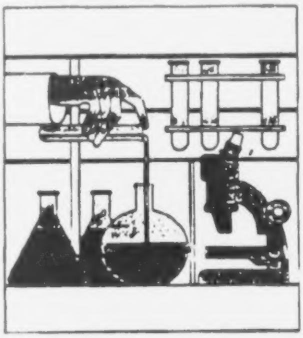
BUSH Administration to Support New Drug Development

Drawing on his experience when vice president as head of a federal task force on regulatory reform, President Bush is expected to support cutting through administrative burdens to get selected new drugs to the people who need them, according to a key transition aide to the President.

In an exclusive interview with *Pharmacy News*, Stuart M. Gerson, a Washington, D.C., attorney with Epstein Becker & Green, said the President has a strong interest in improving the regulatory environment for the development and approval of drugs which are likely to be both therapeutically sound and cost effective.

Gerson, a lawyer long experienced in national health policy, expects the President's favorable stance on regulatory reform to be an asset to the pharmaceutical industry as new drugs are developed and submitted for regulatory approval.

"The safety of the public will be a paramount consideration throughout the regulatory reform process, but the new Administration is clearly opposed to over regulation of any industry," said Gerson. "The President wants to lessen the involvement of regulation in the lives of Americans and is committed to speeding the approval of new treatments which are likely to save lives."



The U.S. National Institute of Allergy and Infectious Diseases (NIAID) has agreed to conduct with Syntex a national controlled clinical trial of Cytovene®, see page 6.

As new drugs are developed and submitted for approval, Stuart Gerson expects the Bush Administration to carefully review the impact of new regulations on the pharmaceutical industry. "The President has a strong interest in maintaining a strong, non-federalized approach to health care, and this should create a positive environment for continued growth and development of the pharmaceutical industry," said Gerson.

Private Pharmaceutical Research Now Exceeds NIH Budget

Increased Administration interest in new drug development will be important in bringing new drugs to consumers, as research and development costs increase for pharmaceutical companies. Syntex has committed $900 million in the last ten years to develop new pharmaceuticals, and the Pharmaceutical Manufacturers Association estimates that U.S. drug companies this year will spend more on research than the National Institutes of Health.

"The President believes we should attempt to reduce the need for health care by devoting research attention to prevention and cure of debilitating diseases of the aged and other high risk groups," said Mr. Gerson. "The President's record of regulatory reform has been significant in cutting through administrative burdens so that new drugs can get to the people who need them. He will see to it that this continues." ■

Health Law

Are HMOs Liable for Acts of Independent Contractor Physicians?

by Stuart M. Gerson, Esq.

A recent court decision demonstrates that there are limits to freedom from liability for the actions of independent contractors. This column discusses the *implications* of the decision for providers. "Health Law" is a regular feature of *Physician Executive* contributed by the law firm of Epstein Becker and Green, P.C. Douglas A. Hastings, Esq., a partner in the firm's Washington, D.C., offices, serves as column editor.

HMOs, particularly IPA models, have viewed themselves as largely insulated from their contracting physicians' negligence under legal doctrines concerning independent contractors. Under those traditional notions, a master could be held liable for its servant's acts undertaken within the scope of employment, but an employer generally would not be held responsible for the acts of independent contractors. However, a recent case decided by the United States Court of Appeals for the District of Columbia Circuit, *Schleier v. Kaiser Foundation Health Plan*, demonstrates that there are limitations on the independent contractor defense that must be considered by all health care providers.

Mr. Smith, the patient in the *Schleier* case, was a paid subscriber of the Kaiser Foundation Health Plan, a group model health maintenance organization whose physicians are generally its employees, but that uses the services of consulting physicians. Complaining of abdominal pain, Mr. Smith first was treated at a Kaiser clinic. Two months later, still experiencing stomach pain, Mr. Smith spoke with a Kaiser nurse. Two days after that, after he had a 45-minute episode of radiating chest-shoulder pain, Kaiser referred Mr. Smith to the emergency department of a local hospital. An ECG administered there was inconclusive as to whether Mr. Smith had suffered a heart attack, but a Kaiser staff physician admitted him to the hospital's coronary care unit.

The next day, Dr. Sherber (Two spellings are used for this name. I selected Sherber, but you will need to check.), a cardiologist who was an outside consultant, not a Kaiser staff member, was brought in to examine Mr. Smith. Dr. Sherber initially concluded that Mr. Smith had not suffered a heart attack, but he scheduled additional tests, including a MUGA test to measure the heart's contractibility and pumping ability and a stress ECG.

Dr. Sherber found the MUGA test results normal but the stress ECG results abnormal. He nevertheless concluded that it was not likely that Mr. Smith had coronary heart disease, and he did not recommend any further testing or any curtailment of Mr. Smith's activities.

Following Dr. Sherber's exam, Mr. Smith complained to Kaiser physicians of profuse night sweats but was told, on the basis of his medical charts, that the sweats were not cardiac related. Several weeks later, after a day of household chores, Mr. Smith became weak and exhausted. The next day he complained of nausea and sweats. Another call to Kaiser proved futile, and an ambulance was called. Mr. Smith lost consciousness, stopped breathing, and died en route to the hospital.

Mr. Smith's wife, having obtained medical evidence that night sweats could be a symptom of severe coronary artery disease, asserted that Dr. Sherber was negligent in his diagnosis and treatment. However, the estate did not simply bring an action against the physician. It sued the HMO as well, and the jury in the case returned an $825,000 verdict against Kaiser.

In seeking a directed verdict, Kaiser had argued unsuccessfully that it could not be held vicariously liable for the negligence of Dr. Sherber because he was an independent contractor. On appeal, the Circuit Court found this contention "insubstantial." The court upheld liability without rejecting the idea that Sherber was indeed an independent contractor. The court ruled that the requisite "master-servant" relationship existed between Kaiser and Dr. Sherber, based on consideration (though not necessarily on the applicability) of five factors:

- Selection and engagement of the servant.

- Payment of wages

- Power of discharge

- Power to control the servant's behavior

- Whether the work is part of the regular business of the employer.

While the evidence was inconclusive on certain aspects of the relationship, the appellate court found that Kaiser had sufficient control over Dr. Sherber, Dr. Sherber was working under Kaiser physicians, Kaiser could discharge him, and Dr. Sherber's activities fell within the scope of Kaiser's regular business function. The court adopted the reasoning of a Maryland case in which a hospital was held liable for its emergency department doctors, even though they were independent contractors.

The court further opined that, because Dr. Sherber was brought in to consult with Kaiser physicians, Mr. Smith had every reason to believe that the doctor was a Kaiser agent and that the referral clearly fell within the scope of Kaiser's normal business. Based upon an amalgam of these factors, the court easily satisfied itself "of Kaiser's liability for Sherber's negligent treatment of Smith."

The *Schleier* case is significant for HMOs of any model and for hospitals. It is difficult to conceive of a situation in which a referring entity would not be the recipient of reports from a physician to whom a referral is made or in which the referring entity could not terminate the services of such a physician. Nor, inasmuch as health care is the normal business of any referring entity, would a referral be made outside the scope of regular business.

The upshot of *Schleier* is that, in the District of Columbia or anywhere else where the precedent is followed, the traditional protection as to independent contracting physicians may not be very much protection at all.

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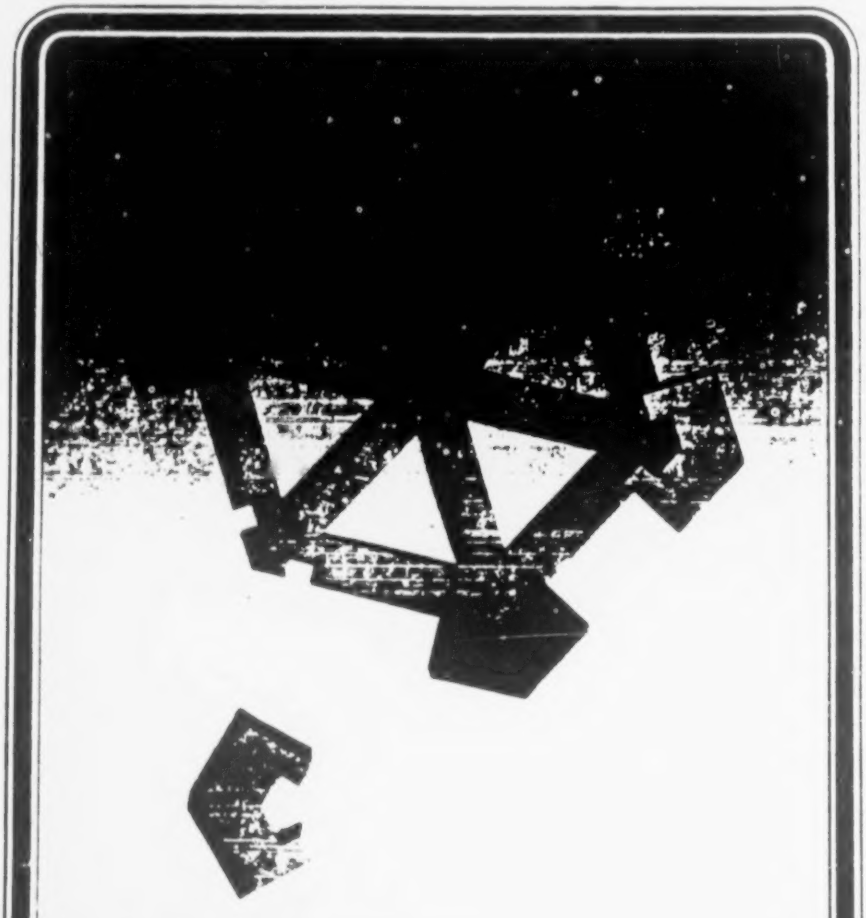
The total management magazine for health care institutions

Hospitals

MARCH 1, 1982

Special Issue

Multihospital Systems in the '80s



Hospitals must consider antitrust implications of multi-institutional arrangements

BY WILLIAM G. KOPIT, STUART M. GERSON, AND ROBERT J. MOSES

Antitrust issues, cases, and questions regarding multi-institutional arrangements such as shared services, mergers and acquisitions, and resource/market allocation are discussed, and hospitals are urged to consider them carefully before undertaking such arrangements

Multi-institutional arrangements among hospitals raise a variety of antitrust issues. This article will provide some suggestions on how hospitals can avoid adverse legal consequences of these issues. The discussion will be limited to federal law; however, for the most part, state antitrust law parallels federal law.

The health care industry once was considered to be immune from application of the antitrust laws. However, within the past few years, the Supreme Court of the United States has made it quite clear that this "professional exemption" has no validity, and, as the growing volume of litigation indicates, the antitrust laws are being applied to the activities of hospitals and other health care providers.

The threat of this kind of litigation must not be overlooked. Antitrust litigation can be long and costly.[1] The prevailing party might be awarded its attorney's fees, and the amount of the actual damages is tripled in settlements under the antitrust laws. Moreover, any member of a multi-institutional arrangement could be sued and required to pay all damages, not just its share.[2]

The purpose of the antitrust laws is to promote free competition in the marketplace. Activities that tend to lessen the freedom to compete are most likely to be scrutinized under the laws. The primary statement of fundamental antitrust policy is embodied in the Sherman Act, the first federal antitrust statute, which was passed in 1890. Section 1 prohibits "every contract, combination . . . or conspiracy, in restraint of trade . . . among the several states."[3] Of course, every contract restrains trade in some way. Thus, the legal rule of thumb that has developed in Section 1 antitrust cases is that only unreasonable restraints on competition are illegal.

The courts have found that certain types of agreements—price fixing, market allocation, certain group boycotts, and tie-ins—are so inherently unreasonable that no possible justification exists for their use. These agreements are *per se* violations; they are illegal on their face no matter what their purposes or effects are. However, the lower courts have hesitated to apply the *per se* rule to these practices when they have been conducted in the health care field and, instead, usually have applied "rule of reason" analysis, which permits review of justifications for these restraints.[4]

Multihospital agreements could be challenged as antitrust violations. Therefore, before entering into such agreements, hospitals should be aware of the standards for judging their propriety.

The most common type of multi-institutional agreement probably involves the creation of a shared services organization or shared purchasing organization (SSO), which restrains trade because it removes the participating hospitals from the marketplace as individual and competing buyers or sellers. Nonetheless, in most cases, the creation of an SSO would not be viewed as an unreasonable restraint of trade under the antitrust laws, for several reasons. First, the SSO itself would be a new entrant into the marketplace.[5] Second, it would seem to be extremely unlikely that any individual hospital could enter the market as a buyer or a seller on as large a scale as an SSO.

William G. Kopit, Stuart M. Gerson, and Robert J. Moses *are of the firm of Epstein Becker Borsody & Green, P.C., Washington, DC*

Certain specific actions taken in connection with the creation of an SSO or by the organization itself.[6] may raise more substantial antitrust problems. Again, however, the standard for judging these actions should be reasonableness.

Membership or participation restrictions are the most common types of restrictions of SSOs, and reasonable restrictions on membership that are based on objective criteria should be permissible. For example, a requirement that all participating hospitals be exempt from federal taxes or be located in a particular geographic area should be permissible. Restrictions on participation because of limitations of the capacity of the SSO might be more difficult to defend. The determination of which potential members to exclude must be based on reasonable criteria, but even then, if the restriction is permanent and if the economic disadvantage to the excluded hospitals is sufficient, the restriction still might be found to be unreasonable.

The reasonableness of the restraint that is imposed by an SSO also depends on the extent to which it will foreclose the market. If the arrangement between the SSO and its members is exclusive—that is, the members always must purchase or sell through the SSO—it is far more likely to be found to be unreasonable than if the arrangement is nonexclusive—that is, if the members may purchase or sell through other sources. However, even an exclusive arrangement may be permissible if it doesn't foreclose the market too severely.

'. . . in most cases the creation of an SSO would not be viewed as an unreasonable restraint of trade under the antitrust laws. . . .'

Finally, if a hospital that is participating in an SSO requires an outside, third party to use the services of the SSO, it might be creating an illegal tie-in. For example, as a prerequisite to treatment, a hospital might require a patient to use the services of a shared laboratory with which it is affiliated. Unless the hospital has a *bona fide* operational reason for this practice, it could be conducting an unreasonable restraint of trade.[7] Moreover, if the arrangement between the hospital and the SSO is exclusive, an additional problem could be presented.

Antitrust concerns may arise in many circumstances other than creation or operation of SSOs. For example, several hospitals may jointly appoint an agent to negotiate on their behalf with third-party payers such as Blue Cross or Medicaid. If such an arrangement were handled improperly, allegations of price fixing or concerted refusal to deal could be made.[8] If the participants tried to impose a price by means of a threatened or an actual concerted refusal to deal, the arrangement certainly could be illegal.[9]

In addition, the dissemination of pricing data among hospitals that are participating in such an arrangement might be scrutinized under the antitrust laws. However, liability should be imposed only if the dissemination has an adverse effect on competition. In making this determination, a court probably would consider the level of concentration of the market, the fungibility of the services offered, the manner in which the data were disseminated, the presence or the absence of any other practices that suggest price fixing, and the presence or the absence of any controlling circumstances for disclosure.[10] Thus, it would seem that dissemination of cost data should be permissible in the absence of any other activities that would tend to affect prices.

Hospitals also could encounter antitrust problems if they enter agreements in which they allocate the services to be provided by each participating hospital. Indeed, such market allocation agreements in the general commercial area would be *per se* illegal under the antitrust laws. However, the public benefit that accrues from efficient allocation of resources might warrant application of rule of reason analysis in certain cases involving hospitals. If hospitals enter into such arrangements, they should carefully delineate the public benefit to be gained by the allocation of services. In addition, in certain circumstances, it may be advantageous for hospitals to work closely with their states' health planning agencies in order to ensure the greatest justification of public benefit from the resource allocation.[11]

Hospital mergers recently have generated much interest regarding possible antitrust implications.

'. . . the dissemination of pricing data among hospitals . . . might be scrutinized under the antitrust laws. However liability should be imposed only if the dissemination has an adverse effect on competition.'

They are subject to Section 7 of the Clayton Act, which prohibits anticompetitive acquisitions, and to Section 2 of the Sherman Act, which prohibits monopolization. Analysis of the anticompetitive effect of an acquisition requires a review of the level of concentration in the industry. The United States Department of Justice has stated that, in general, in a highly concentrated market (one in which the shares of the four largest firms amount to approximately 75 percent or more of the market) it will challenge mergers of firms that possess the following market shares, *respectively*: Acquiring firm—4 percent, 10 percent, and 15 percent or more vis-a-vis acquired firm—4 percent or more, 2 percent or more, and one percent or more. In less highly concentrated markets, the Department of Justice will challenge mergers of firms that possess the following market shares, *respectively*: Acquiring firm—5 percent, 10 percent, 15 percent, 20 percent, and 25 percent or more vis-a-vis acquired firm—5 percent or more, 4 percent or more, 3 percent or more, 2 percent or more, one percent or more.[12]

Of course, in such an analysis, the definitions of the relevant product and geographic markets are critical to the determination of whether merged firms have met the thresholds that warrant review. It appears that the few courts that have handled such cases involving health services have made very fine product market distinctions. For example, distinctions have been made between the practice of dentistry and prepaid dental care[13] and between adult open-heart surgery and pediatric open-heart surgery.[14]

> Hospitals also could encounter antitrust problems if they enter agreements in which they allocate the services to be provided by each participating hospital. It may be advantageous for hospitals to work closely with the states' health planning agencies in order to ensure the greatest justification of public benefit from the resource allocation.

In a recent Justice Department action challenging an acquisition by a hospital chain, the court distinguished between inpatient psychiatric care that is provided by private psychiatric hospitals and nongovernmental, general, acute care hospitals, on the one hand, and inpatient psychiatric care that is provided by state-owned psychiatric facilities, on the other hand.[15]

The effects of making very specific delineations of the product markets in merger cases will vary. For example, in the psychiatric hospital case, the exclusion of state-owned facilities from the definition of the relevant product market indicated that the merged firm controlled a greater share of the market, thereby increasing the likelihood that it would be found guilty of an antitrust violation. As a quite different example, assume that a hospital acquires a rehabilitation facility and that specific delineation of their product markets causes the acquisition to be treated as a "vertical" merger between firms in different, but affiliated, markets, rather than as a "horizontal" merger between competitors in the same market. This characterization could increase the likelihood of successful defense of the acquisition. Moreover, the analysis of its anticompetitive effect could focus on the extent to which the acquiring hospital's referral business would be foreclosed from the market by the acquisition rather than on the extent to which the merged firm controlled a particular service.

Judged by current standards, most mergers involving small or medium-sized general hospitals in large metropolitan areas should be permissible under the antitrust laws. However, if the merging hospitals possess a disproportionate number of all beds in a geographic area or in a particular specialty, it is more likely that the merger could be challenged successfully. In contrast, in rural areas or in other areas in which the scarcity of facilities creates concentrated markets, mergers of hospitals are more vulnerable to antitrust scrutiny.

In certain cases, it may be advantageous for hospitals to obtain approvals for acquisitions from their states' planning agencies. If a certificate of need is obtained for a merger or an acquisition, it is arguable that the merger or the acquisition is immune from antitrust scrutiny. Thus, a United States District Court in North Carolina recently dismissed an antitrust challenge to an acquisition, finding that the state agency's consideration of the acquisition's anticompetitive effect prior to granting a certificate of need for it immunized the acquisition.[16]

Interestingly, the courts seem to be relying to some extent on determinations of state health departments and planning agencies in defining relevant geographic markets. In one case, the court, without discussion, merely found the relevant geographic market to be the health service area that was designated under the National Health Planning and Resources Development Act of 1974.[17] In another case, the court reviewed information on patient flow and county health department subdivisions to determine the relevant geographic market.[18]

In conclusion, hospitals should carefully consider the antitrust concerns posed by multi-institutional arrangements before initiating these arrangements. In many cases, hospitals can substantially reduce their exposure to antitrust liability by taking appropriate precautionary measures. When they cannot do so, they at least should intelligently gauge the true risks involved before undertaking the arrangements.

For example, a hospital may obtain an advance business review of its proposed multi-institutional arrangement from the Justice Department. Although this procedure has limited value, because the Department indicates only its "present intent" regarding the proposed conduct, the procedure is perhaps the best available prearrangement indicator of legality.[19] In view of this importance, the Department issues a positive response only when it is persuaded that the proposed practice is clearly permissible. ■

NOTES

1. This is particularly true because the responsible officers and directors may be subject to civil or criminal liability as a result of a corporation's anticompetitive activities. See *Murphy Tugboat Co. v. Shipowners and Merchants Towboat Co.*, 467 F. Supp. 841, 851-54 (N.D. Cal. 1979).
2. *Texas Industries, Inc. v. Radcliff Materials, Inc.*, _____ U.S. _____, 101 S. Ct. 2061 (1981).
3. Monopolistic practices, which are covered by Section 2 of the Sherman Act, are outside the scope of this article except insofar as they relate to mergers.
4. The United States Supreme Court has an opportunity to decide whether per se analysis is ever appropriate in the health care field. In *Arizona v. Maricopa County Medical Society*, No. 80-419 (argued Nov. 4, 1981), the State of Arizona has challenged as price fixing a maximum fee schedule set by a physicians' group in its contractual agreement with an insurer.
5. Assuming that the SSO is a separate entity, it should be analyzed as a joint venture. If the hospitals do not create a separate entity but merely agree to set a price for their purchase or sale of specific services, the arrangement will most likely be analyzed simply as an agreement among competitors.
6. Although the SSO is a single entity, it is likely that its actions in these cases will

TESTIMONY OF

STUART M. GERSON

ON THE SUBJECT OF EDUCATION AND DRUGS

BEFORE THE REPUBLICAN PLATFORM COMMITTEE

Kansas City Missouri -- May 31, 1988

Introduction

The matter of unlawful drugs and their devastating impact on the American capacity to educate new generations of productive and competitive citizens has in recent months come to dominate partisan political discourse. Politicians at all levels now spare few words in espousing their own unmatchable commitments to the eradication of the drug blight and their singular insights into its immediate accomplishment. And to hear many of our opponents, one might get the impression that drug and educational policies are their special prerogatives. They are not.

According to authoritative studies, illegal drug use in the United States peaked several years ago. In addition, many critical measures of educational success are on the upswing. I suggest that both of these signs of progress are not unrelated to the moral restoration encouraged by the Reagan-Bush administration and by its strong law-enforcement emphasis.

In view of the legitimate attention that these matters have been given in this administration, one might reasonably wonder why so many of the loudest voices, especially those most vehemently critical of our efforts, had not been heard until the current political season. Nevertheless, the problems associated with drugs (and education and drugs), however slightly diminished, continue both in their severity and importance. And at least some of these problems are fairly addressed through national electoral politics -- both thematically in terms of platform and specifically in terms of policies.

A Note on Federalism

In conducting this national examination, there is a natural tendency to seek comprehensive national solutions. That tendency is magnified in the context of writing a presidential year platform. The Republican Party should not, however, abandon its traditional philosophical and practical strength -- a reliance upon principles of federalism -- which fairly distinguishes it from the Democratic Party, particularly when it is led by a philosophical liberal such as its likely presidential nominee.

There are no single solutions to many of the complex matters that face us, and that is especially true when it comes to drugs and education. Seemingly efficacious remedies and programs are not necessarily transferable from one place to another -- say from Massachusetts to anywhere else. But there is a unifying quality to successful efforts: an intense local involvement in planning and execution, and the development of a strong local ethic that constantly reinforces commitment. It therefore would be counterproductive to let a national bandwagon overrun state and regional distinctions and experiences as we attempt to create beneficial policies.

The Republican Party has long known that diversity maximizes ingenuity. Where there are no guaranteed universal solutions, we would do well to employ the several states, as Supreme Court Justice Louis Brandeis suggested years ago, as multiple laboratories for change.

The Challenge of the Drug Problem

Although the current topic is "Education and Drugs," I offer only brief mention of drug education. I do note that when well conceived and run, such programs are a preventive first line of defense to ignorance and falsely-perceived invulnerability, and an ongoing spur to effective youth peer support. They are therefore entirely worthy of endorsement and expansion, but they cannot address certain core difficulties.

Many young people, and older ones as well, understand the dangers and ultimate futility of drug involvement, but involve themselves nevertheless. Some use and abuse drugs to escape from a world in which they see little opportunity. Some, often at shockingly young ages, see drug commerce as the only available-- and an immensely lucrative -- opportunity for success.

The former group lies outside of conventional societal norms; the latter is composed of innovators, sometimes of considerable talent, who accept society's material norms but pursue them by antisocial means. Both groups, however, are unproductive to an America which increasingly must compete to survive economically. Moreover, the requirements of both groups lead to vast amounts of criminal activity (as much as 75% of all criminal activity in some urban areas is somehow related to drugs) involving substantial personal injury and property loss, and a consequential diversion of still further of our scarce resources in counteracting this devastation.

While drug abuse and drug commerce are not confined to any region or segment of American society, all too often, the participation in these activities is defined by racial or ethnic minority status. This is not to say that these activities are undertaken by, or are even acceptable to, most members of these minority groups. They are no; whatever their race, ethnicity or class, most people obey the law, sometimes against considerable pressures and temptations to do otherwise. We should immediately reject any stereotype to the contrary.

Nevertheless, it is accurate to say that some of the most intractable difficulties associated with drugs are epidemic in minority communities and that, as a society, we shall not solve our drug problem in any material regard without substantially ameliorating that aspect of it that is debilitating so much of the youth of these communities.

The Educational Imperative

There are obvious moral and social reasons to address the foregoing aspect of the drug problem. For Republicans there also is a sound political reason to do so: we need to broaden our base and a genuine and visible commitment to the disadvantaged is a sine qua non. Far less obvious is an economic necessity -- and here we get to the matter of education itself, not mere drug education. Quite simply, we need the talents of minority youth in the economic mainstream or we cannot maintain a competitive position in the world economy.

Given demographic trends in our aging population, by the year 2000, more than three-quarters of the available entrants into the domestic workforce will be minorities and/or women. At the same time, job growth will be greatest in those areas requiring the highest levels of skills and training. Indeed, for the first time in history, a majority of new jobs soon will require post-secondary education.

A persistence of current trends will assure a widening disparity among the skills workers have and the ones competitive employers need. We simply cannot afford our current dropout and functional-illiteracy rates, and we can afford even less the costs engendered by the segment of the population so afflicted who also are drug users and drug sellers.

Our need is clear, and we have the pool of resources upon which to draw in order to meet that need. There is a substantial educational obstacle, but we must overcome it, and do so in two regards: educating minority youth as to their possibilities and America's need for them; and then educating them in the rigorous academic disciplines that we require to fill jobs in our competing industries.

These are private sector needs, and by history and disposition, the Republican Party is well suited to create the private and local incentives that we require.

Two Platform Proposals

Having seen the need and the opportunity in minority communities, I suggest the inclusion of several concrete platform points.

First, whatever else we do, the platform of the Republican Party must firmly state that we oppose all efforts aimed at drug legalization and regulated dispensation. There is nothing to study here, either.

Putting aside the practical problems that legalization would create (for example, which drugs would be legalized, how much would be dispensed, especially in when there would be increasing demand from addicts, what to do about luring new users and creating new addicts), it is clear that legalization would amount to a declaration of our society's surrender in a war that we cannot permit ourselves to lose. Legalization would mean that we are willing to tolerate and encourage the ultimate in non-productivity and passivity, a concept which, by the way, the overwhelming bulk of the minority community, like everyone else, rejects.

That would be a flat denial of the essence of the American spirit and of the historical value we place upon education and effort. Instead, we must send a message of hope, self-worth and self-interest to those most at risk of entrapment by the drug mentality. It is a legitimate message of hope, and it is a legitimate Republican message.

Second, besides encouraging diverse and competitive schools, we must recognize that there are critical limitations to formal school structures and resources. We must encourage a government-business partnership that could provide incentives for the early identification of promising young people and their participation in work/study and private training programs -- as educational and economic supplements -- as early as the junior high school level.

We also must open the schools to volunteer teachers from business, science and technology to offer skills and programs that cannot be provided through indigenous resources. Government professionals also ought to be allowed time to make similar contributions.

Besides offering a practical connection to many subjects from which man students are separated by an enormous experiential gulf, the presence of these volunteers also would offer far more useful role models to young people at risk than the ones that currently offer such a false attraction.

Conclusion

Through sound education we can cast our nets out to the most disadvantaged, and pull them into the mainstream of the society. We have accomplished much, but the costs of what we currently are failing to do are immense. Our need for change is overwhelming, and we must get on with it.

REMARKS OF
STUART M. GERSON
BEFORE THE WOMEN IN GOVERNMENT RELATIONS
WASHINGTON, D.C.
TUESDAY, October 5, 1988

Introduction

Especially when addressing a group of policy professionals like this one, the advocate of a conservative cause is at a certain natural disadvantage when debating the proponent of a liberal candidate -- particularly when it comes to the matter of healthcare policy.

The liberal can come before you not only with a comprehensive list of plans and programs, each intended to be administered for the public good by a compassionate central authority (that is, himself, or those equally and sanely compassionate).

The conservative, on the other hand, comes to you with what might appear at best to be a patchwork of incomplete solutions, seeming to call naively or archly, depending upon your point of view, for what in large part are private initiatives which, almost by definition, cannot have the immediacy of effect of his opponent's central-government-driven proposals.

This presumption finds considerable support when one thumbs through the reams of position papers and detailed legislative proposals generated by the presidential campaign of the Governor of Massachusetts, and compares those raw materials of a planner's heaven with the far sparser proposals of the campaign of George Bush.

Indeed, faced with what our opponents continually argue is such a deficit of substance, it puts one in mind of the time the now-little-remembered Democrat, if I may use that term, Al Smith, was preparing to deliver a stump speech and was greeted by a heckler who shouted: "Tell 'em everything you know Al; it'll only take a minute."

Smith quickly responded: "I'll tell 'em everything we both know; it won't take any longer." In comparing the healthcare positions of the Bush and Dukakis campaigns, I'll try to do as well.

The Approach of Vice President Bush to Healthcare

The healthcare programs and policies supported by Vice President Bush are characterized by four common elements that distinguish his positions greatly from those of Governor Dukakis.

The first of these is reliance upon Federalism which will allow for experimentation and diversity in solutions among the states, supplemented by a small but necessary level of federal assistance.

In stressing state-centered solutions, for example, responding with a Medicaid buy-in for those low-income people who do not have health insurance but are not now Medicaid-eligible, one harkens back to Supreme Court Justice Louis Brandeis' postulation that the states ought to serve as laboratories for the development of varied responses to important social problems. While we do not call for the repeal of the health insurance program just enacted in the Commonwealth of Massachusetts -- assuming that Governor Dukakis, who perhaps realizes the burdens that it will impose, ever allows it to be funded, we do not subscribe to his notion that the United States is really just one big version of Massachusetts. As I shall discuss further, it is rather clear that what succeeds there, may not succeed at all elsewhere.

A second characteristic of the Vice President's approach to federal healthcare policy is that it must be incremental. As much as we might like to do many different things, we cannot do all of them -- at least at their fullest level of development -- all at once. The Vice President and the current administration were material in obtaining the passage of the remarkable new catastrophic coverage act. We must as a society allow ourselves some room to absorb the cost and effects of this program.

A third mandatory characteristic of any Bush proposal is that it must provide for sufficient incentives to stimulate voluntary individual and corporate action. We do not share our opponents' view that all solutions lie within the sphere of the federal government.

Indeed, we remember well the Democrat's federal-program mentality that has in the past created inflation, diminished world-competitiveness and which, after all, was the stimulus for popular acceptance of the Reagan-Bush revolution in 1980.

When George Bush speaks about the private and charitable initiatives that are the thousand points of light, it is clear that Governor Dukakis does not understand what he is talking about. The people, however, do.

The fourth characteristic of George Bush's health policies (and all his other initiatives as well) is practicality: they must be directed specifically at targeted needs and their costs must be controllable. When we look in more detail at how the two candidates hope to address the health-insurance gap, this issue of practicality will be particularly noticeable.

Contrasting the Candidates on Health Issues

A matter sure to be raised, if not finally addressed, in the next Congress is long term care.

Governor Dukakis favors the Pepper Bill, a federal entitlement program with a $36-60 billion three-year projected cost. Though the proposal is intended to be financed by lifting the cap on the 1.5% payroll tax for Medicare, OMB estimates that this will cover no more than half of the proposal.

Vice President Bush has a significantly more proactive view. He believes that we ought to attempt to reduce the need for care by devoting research attention to the prevention and cure of debilitating diseases of the aged such as Alzheimer's, arthritis and osteoporosis.

He wants to get the Congress to eliminate the penalties that now obtain for converting life insurance, IRAs, and other savings plans to meet long term care needs, and to afford long term care insurance the same favorable tax treatment that life and health insurance currently get. These policies would encourage younger Americans, in consort with their employers, to set up mechanisms that would assure the private financing of long term care needs.

For those seniors who cannot afford long term care insurance, George Bush favors changing Medicaid requirements which force families to "spend down" their life savings until they reach the poverty level before becoming eligible for governmental assistance.

And finally, Vice President Bush encourages creative programs to assist patients and health care providers to use the system most effectively. Case-management programs can help provide the best mix of services to the patient for the lowest cost to the payor. Other managed care solutions including HMOs and PPOs also should be encouraged.

In the context of the Presidential campaign, the most-hotly debated healthcare item concerns the provision of healthcare to the uninsured.

Along with Senator Kennedy, Governor Dukakis believes that *mandated health insurance*, which he seems to think carries no cost, is the answer.

This is the centerpiece of the Dukakis health constellation, his administration having recently secured such a plan for the Commonwealth of Massachusetts, and indeed it attempts to address (though in an unavailing manner) the admitted fact that there are about 37 million Americans (17 percent of the population) who have no health insurance. With the rising cost of medical care, that figure begs attention. And both campaigns are giving it plenty, though in markedly different ways.

I'll leave it to my opponent to describe the Dukakis proposal, though if he is complete, we might be here until nightfall. I'll simply describe why it is the wrong approach and why the Vice President's seemingly-more-modest proposals are more to the point.

The Massachusetts plan doesn't address the real problem. In healthcare today, the problem is skyrocketing health care costs. The Dukakis plan offers nothing to keep costs down -- except that indirectly it well might diminish the overall quality of health insurance by spurring employers to make the mandated minimum the maximum.

I also note that the very example Governor Dukakis cited in debate -- the unemployed Houston worker -- proves the point. His exemplar, Mr. Strickland has said that he had insurance available through his wife's employer -- it just wasn't affordable.

Not only does the Dukakis mandated program fail to address cost-containment, its inherent economic costs are simply too great to bear.

The Massachusetts experience is hardly a reassuring model, inasmuch as even before the arrival of mandated insurance, Massachusetts ranked first among all 50 states in health care costs per capita.

But Massachusetts, as George McGovern could attest, is hardly like the rest of the nation. The peculiar nature of its highly paid population can support these greater costs -- indeed it essentially has done so irrespective of mandated insurance. However, to get to that point, Massachusetts under Dukakis has reshaped itself economically, intentionally driving out older manufacturing industries (shoes and textiles) and replacing them with the high-technology ones that its rich academic and social environment can attract.

But, at the same time, Massachusetts has lost as much population as it has gained, and the workers who have left were the occupants of the manufacturing jobs that were lost -- 90,000 of them in the last 4 years alone (40 percent of all such jobs lost in the U.S.).

They are now part of the healthcare burden of other states (and other states' employers) -- states which are very different from Massachusetts.

The Kennedy proposal, upon which that of Governor Dukakis is modeled, is estimated to have a potential initial effect of increasing health insurance costs by as much as $100 billion, most of it coming from the required majority contribution by employers. When you consider that most of the working uninsured are employed by the smallest businesses, the effect of this increase, even if far less than the greatest estimate, should be obvious.

Even our opponents concede a cost of 100,000 jobs. We think it would be more like several million, when you consider lost job _creation_ in the part of the economy where most new jobs are created -- small business.

The cost imposition of mandated health insurance also cannot be seen in a total vacuum because its proponents, including Governor Dukakis, also favor a substantial increase in the minimum wage from $3.35 to $4.55 an hour -- and may have the votes to pull it off.

If they do, you have to add that figure to the approximately 50 cents per hour per employee that no less of an authority than Senator Kennedy estimates mandated health insurance will cost. You then come to the troubling realization that you've just increased the cost of keeping an entry-level worker on the payroll by 50 percent of current salary. And small employers simply can't afford to do that, at least if they want to stay in business.

In sum, it would be cruelly self-destructive if in the name of increasing the percentage of employed persons who have health insurance we did so simply by increasing the percentage of the population that is unemployed.

Nor does the Dukakis proposal even help the people who need help most.

Of the 37 million who don't have insurance, only about half are employed (and many of the latter are young part-time employees or persons otherwise in the household of an employed, covered individual). Three-fourths of the employed uninsured workers earn less than $10,000 a year.

The Democrat's incredibly costly mandated program would not even reach the unemployed half and would not do anything for the many of the lower-income uninsured (although it still would cost their bosses plenty). Most of those workers are young people (and many of them are minorities and women) just getting their first foothold in the American workforce. The Dukakis plan can't help them because these workers can't afford health insurance at market prices.

The people who need help are poor children, lower income workers who cannot afford market rate insurance, and people with serious pre-existing conditions who cannot find insurance. George Bush plans to help all of these at-risk populations.

The Vice President believes that we first must extend help to pregnant women and to babies. He supports requiring states to cover pregnant women and also infants up to age one, at no cost to the mother. He also would require counseling and follow through services for these mothers.

For older children of poor families, the Vice President will work with the states through incentives to get needed coverage provided at no cost.

The Vice President also believes that people with serious pre-existing conditions, such as cancer, arthritis and heart conditions, who cannot find affordable health insurance should be able to buy coverage from the state risk pools that many states already are beginning to offer.

Finally, as he explained in the first Presidential Debate, George Bush strongly believes that lower income workers should be able to buy into Medicaid coverage. This is an approach that must be developed further because its implementation is dependent upon resolving some of the variances among the states, but it is an exciting and potentially very cost-effective way of addressing the health insurance needs of an important target population.

One of the most significant increments to the cost of health care, particularly on the physician side is the skyrocketing cost of professional liability insurance. Michael Dukakis does not even propose seriously to address the matter of Tort Reform and the liability crisis.

George Bush, on the other hand, is quite specific. He wants to restore fault as the determinative standard in litigation and to eliminate the joint and several liability concept that often socks marginally involved defendants with the entire cost of a judgment. The Vice President also wants to encourage, and in some case require, the use of expanded forms of alternative dispute resolution and arbitration, which are far less expensive and less prone to exorbitant judgments than traditional litigation.

Another important component of healthcare delivery is nurses and allied professionals. Michael Dukakis has said nothing about these valuable people. George Bush will address the nursing shortage by expanding loans, especially to minority students, and use the

VA as an exemplary leader in employing new ways to use nurses and paraprofessionals to maximize the effectiveness of care delivery.

Finally, the Vice President would think me remiss if I did not address a few remarks to the subject of the AIDS pandemic. The need to prevent and to treat this horrible disease is not a matter that separates the two candidates, and the issue of treatment should not be politicized in any way.

George Bush does bring three important things to the issue. First, his record of regulatory reform has been significant in cutting through the administrative burden so that new drugs can get to the people who need them. He will see to it that this continues.

Second, he recognizes that this dread killer really cannot be controlled and eliminated without a reasoned program of testing and information exchange.

And third, as he does in other areas as well -- areas including the pledge of allegiance, and our attitudes towards criminals and the victims of crime -- Vice President Bush recognizes that the laws and customs of a society may, indeed must, reflect the values of that society. Thus, while he recognizes that AIDS education must be extended, that education must include a moral component.

The popular press has taken to criticizing the two campaigns, particularly ours, for the content of their messages which are labeled unduly negative. I must respectfully disagree, particularly when it comes to the matter of healthcare policy.

This is an extremely important area, and there are extremely important differences between the candidates within it. Our social and political system is broad enough to encompass debate over both of these contrasting viewpoints. Such is the stuff of which electoral choice is properly made. And in making it, I believe that the American public will find the approaches of the Vice President to be the ones that best meet our national needs.

REMARKS OF
STUART M. GERSON
BEFORE THE MENTAL HEALTH LIAISON GROUP
WASHINGTON, D.C.
THURSDAY, October 20, 1988

Introduction

Especially when addressing a group of mental-health-policy professionals like this one, the advocate of a conservative cause is at a certain natural disadvantage when debating the proponent of a liberal candidate -- particularly when it comes to the matter of healthcare policy -- even though Freudian concepts like mastery and individualism are essentially conservative tenets. The liberal can come before you not only with a comprehensive list of plans and programs, each intended to be administered for the public good by a compassionate central authority (that is, himself, or those equally and sanely compassionate).

The conservative, on the other hand, comes to you with what might appear at best to be a patchwork of incomplete solutions, seeming to call naively or archly, depending upon your point of view, for what in large part are local or private initiatives which, almost by definition, cannot have the immediacy of effect of his opponent's central-government-driven proposals.

This presumption finds considerable support when one thumbs through the reams of position papers and detailed legislative proposals generated by the presidential campaign of the Governor of Massachusetts, and compares those raw materials of a planner's heaven with the far sparser proposals of the campaign of George Bush.

Indeed, faced with what our opponents continually argue is such a deficit of substance, it puts one in mind of the time the now-little-remembered Democrat, if I may use that term, Al Smith, was preparing to deliver a stump speech and was greeted by a heckler who shouted: "Tell 'em everything you know Al; it'll only take a minute."

Smith quickly responded: "I'll tell 'em everything we both know; it won't take any longer." In comparing the mental healthcare positions of the Bush and Dukakis campaigns, I'll try to do as well.

Vice President Bush on Mental Health

Mental disorders affect approximately 30 million Americans. With 20% of the population so afflicted, it is not uncommon for any such person to be close to us -- whether a family member afflicted by Alzheimers, a teenager with a drug problem or a neighbor who is depressed.

These illnesses are so devastating -- not only for the victims and their families, but for all society. We must treat these individuals with compassion, recognizing the difficulties they encounter and the special problems they face.

At the outset, however, one must note that both practicality and realism dictate that the Federal role in mental health is inherently and necessarily limited. But within that proper role, Vice President Bush is committed to his prospective administration's working to ensure that important research and prevention programs for mental health are continued.

The Approach of Vice President Bush to Healthcare

The healthcare programs and policies supported by Vice President Bush are characterized by four common elements that distinguish his positions greatly from those of Governor Dukakis.

The first of these is reliance upon Federalism which will allow for experimentation and diversity in solutions among the states, supplemented by a small but necessary level of federal assistance. Here, one harkens back to Supreme Court Justice Louis Brandeis' postulation that the states ought to serve as laboratories for the development of varied responses to important social problems.

While we do not call for the repeal of the health insurance program just enacted in the Commonwealth of Massachusetts -- assuming that Governor Dukakis, who perhaps realizes the burdens that it will impose, ever allows it to be funded, we do not subscribe to his notion that the United States is really just one big version of Massachusetts. As I shall discuss further, it is rather clear that what succeeds there, may not succeed at all elsewhere.

A second characteristic of the Vice President's approach to federal healthcare policy is that it must be incremental. As much as we might like to do many different things, we cannot do all of them -- at least at their fullest level of development -- all at once. The Vice President and the current administration were material in obtaining the passage of the remarkable new catastrophic coverage act. We must as a society allow ourselves some room to absorb the cost and effects of this program.

A third mandatory characteristic of any Bush proposal is that it must provide for sufficient incentives to stimulate voluntary individual and corporate action. We do not share our opponents' view that all solutions lie within the sphere of the federal government.

Indeed, we remember well the Democrat's federal-program mentality that has in the past created inflation, diminished world-competitiveness and which, after all, was the stimulus for popular acceptance of the Reagan-Bush revolution in 1980.

When George Bush speaks about the private and charitable initiatives that are the thousand points of light, it is clear that Governor Dukakis does not understand what he is talking about. The people, however, do. And, in the area of mental health, these local initiatives are especially important in creating the day-to-day support and productive environment in which the mentally-afflicted might find their way.

The fourth characteristic of George Bush's health policies (and all his other initiatives as well) is practicality: they must be directed specifically at targeted needs and their costs must be controllable. When we look in more detail at how the two candidates hope to address the health-insurance gap, this issue of practicality will be particularly noticeable.

Contrasting the Candidates on Health Issues

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Vice President Bush has a significantly more proactive view. He believes that we ought to attempt to reduce the need for care by devoting research attention to the prevention and cure of debilitating diseases of the aged such as Alzheimer's, arthritis and osteoporosis.

He wants to get the Congress to eliminate the penalties that now obtain for converting life insurance, IRAs, and other savings plans to meet long term care needs, and to afford long term care insurance the same favorable tax treatment that life and health insurance currently get. These policies would encourage younger Americans, in consort with their employers, to set up mechanisms that would assure the private financing of long term care needs.

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And finally, Vice President Bush encourages creative programs to assist patients and health care providers to use the system most effectively. Case-management programs can help provide the best mix of services to the patient for the lowest cost to the payor. Other managed care solutions including HMOs and PPOs also should be encouraged.

In the context of the Presidential campaign, the most-hotly debated healthcare item concerns the provision of healthcare to the uninsured.

Along with Senator Kennedy, Governor Dukakis believes that mandated health insurance, which he seems to think carries no cost, is the answer.

This is the centerpiece of the Dukakis health constellation, his administration having recently secured such a plan for the Commonwealth of Massachusetts, and indeed it attempts to address (though in an unavailing manner) the admitted fact that there are about 37 million Americans (17 percent of the population) who have no health insurance. With the rising cost of medical care, that figure begs attention. And both campaigns are giving it plenty, though in markedly different ways.

I'll leave it to my opponent to describe the Dukakis proposal, though if he is complete, we might be here until nightfall. I'll simply describe why it is the wrong approach and why the Vice President's seemingly-more-modest proposals are more to the point.

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Not only does the Dukakis mandated program fail to address cost-containment, its inherent economic costs are simply too great to bear.

The Massachusetts experience is hardly a reassuring model, inasmuch as even before the arrival of mandated insurance, Massachusetts ranked first among all 50 states in health care costs per capita.

In mental health, according to ratings published by the Health research Group and the National Alliance for the Mentally Ill, Massachusetts ranked 41st in the nation in 1987 in terms of the quality of its care for the mentally ill.

According to a report in the Boston Globe of September 14 of this year, Massachusetts has improved slightly in 1988, but still ranks 35th in the country and does not meet the minimum standards of care.

Despite Dukakis' introduction of a much touted $340 million mental health plan in 1985, he has delayed its implementation and, for this year and next, in order to balance his beleaguered budget, actually has withheld monies that his legislature had allocated to expand care for the mentally ill.

But Massachusetts, as George McGovern could attest, is hardly like the rest of the nation. The peculiar nature of its highly paid population can support these greater costs -- indeed it essentially has done so irrespective of mandated insurance. However, to get to that point, Massachusetts under Dukakis has reshaped itself economically, intentionally driving out older manufacturing industries (shoes and textiles) and replacing them with the high-technology ones that its rich academic and social environment can attract.

But, at the same time, Massachusetts has lost as much population as it has gained, and the workers who have left were the occupants of the manufacturing jobs that were lost -- 90,000 of them in the last 4 years alone (40 percent of all such jobs lost in the U.S.).

They are now part of the healthcare burden of other states (and other states' employers) -- states which are very different from Massachusetts.

The Kennedy proposal, upon which that of Governor Dukakis is modeled, is estimated to have a potential initial effect of increasing health insurance costs by as much as $100 billion, most of it coming from the required majority contribution by employers. When you consider that most of the working uninsured are employed by the smallest businesses, the effect of this increase, even if far less than the greatest estimate, should be obvious.

Even our opponents concede a cost of 100,000 jobs. We think it would be more like several million, when you consider lost job creation in the part of the economy where most new jobs are created -- small business.

The cost imposition of mandated health insurance also cannot be seen in a total vacuum because its proponents, including Governor Dukakis, also favor a substantial increase in the minimum wage from $3.35 to $4.55 an hour -- and may have the votes to pull it off.

If they do, you have to add that figure to the approximately 50 cents per hour per employee that no less of an authority than

Senator Kennedy estimates mandated health insurance will cost. You then come to the troubling realization that you've just increased the cost of keeping an entry-level worker on the payroll by 50 percent of current salary. And small employers simply can't afford to do that, at least if they want to stay in business.

In sum, it would be cruelly self-destructive if in the name of increasing the percentage of employed persons who have health insurance we did so simply by increasing the percentage of the population that is unemployed.

Nor does the Dukakis proposal even help the people who need help most.

Of the 37 million who don't have insurance, only about half are employed (and many of the latter are young part-time employees or persons otherwise in the household of an employed, covered individual). Three-fourths of the employed uninsured workers earn less than $10,000 a year.

The Democrat's incredibly costly mandated program would not even reach the unemployed half and would not do anything for the many of the lower-income uninsured (although it still would cost their bosses plenty). Most of those workers are young people (and many of them are minorities and women) just getting their first foothold in the American workforce. The Dukakis plan can't help them because these workers can't afford health insurance at market prices.

The people who need help are poor children, lower income workers who cannot afford market rate insurance, and people with serious pre-existing conditions who cannot find insurance. George Bush plans to help all of these at-risk populations.

The Vice President believes that we first must extend help to pregnant women and to babies. He supports requiring states to cover pregnant women and also infants up to age one, at no cost to the mother. He also would require counseling and follow through services for these mothers.

For older children of poor families, the Vice President will work with the states through incentives to get needed coverage provided at no cost.

The Vice President also believes that people with serious pre-existing conditions, such as cancer, arthritis and heart conditions, who cannot find affordable health insurance should be able to buy coverage from the state risk pools that many states already are beginning to offer.

Finally, as he explained in the first Presidential Debate, George Bush strongly believes that lower income workers should be able to buy into Medicaid coverage. This is an approach that must be developed further because its implementation is dependent upon resolving some of the variances among the states, but it is an exciting and potentially very cost-effective way of addressing the health insurance needs of an important target population.

Looking to the specifics of mental health, the Vice President recognizes that assistance can be given on many different levels to improve mental health and bring appropriate care to persons with mental disorders. He believes that the most appropriate federal role is in the areas of education and prevention.

These include our drug-free initiatives, the efforts of the current Administration to make the public more aware of the serious problem of depression, and the efforts to develop a plan to combat that most complex and difficult of illnesses: depression.

Among federal programs material to this effort that will be continued or expanded are the Depression Awareness and Treatment project, a program which, like the NIH effort on AIDS, has commanded and will continue to command the Vice President's personal interest and attention.

Finally, the Vice President would think me remiss if I did not address a few remarks to two subjects that have significant mental-health components: the problem of the homeless and the problem of the AIDS pandemic.

Our opponent seems to believe that the problem of homelessness is essentially derivative of what he sees as a flawed national approach to housing policy. While there is, no doubt, some housing component to the problem, George Bush understands that the tragedy of homelessness, in significant part, relates to drug and alcohol abuse and to failed policies tracing back over the last 50 years which have forced many people into the street by closing mental institutions in the name of "reform."

The Vice President strongly favors the full funding of the McKinney Act to address the composite problem of homelessness, including the need for mental health and drug counseling, and he wants follow-up legislation to provide for block grants to local administrators, who can use their experience in the community to provide the assistance most needed.

The need to prevent and to treat the horrible affliction of AIDS is not a matter that separates the two candidates, and the issue of treatment should not be politicized in any way.

George Bush does bring three important things to the issue. First, his record of regulatory reform has been significant in cutting through the administrative burden so that new drugs can get to the people who need them. He will see to it that this continues.

Second, he recognizes that this dread killer really cannot be controlled and eliminated without a reasoned program of testing and information exchange.

And third, as he does in other areas as well -- areas including the pledge of allegiance, and our attitudes towards criminals and the victims of crime -- Vice President Bush recognizes that the laws and customs of a society may, indeed must, reflect the values of that society. Thus, while he recognizes that AIDS education must be extended, that education must include a moral component.

The popular press has taken to criticizing the two campaigns, particularly ours, for the content of their messages which are labeled unduly negative. I must respectfully disagree, particularly when it comes to the matter of healthcare policy.

This is an extremely important area, and there are extremely important differences between the candidates within it. Our social and political system is broad enough to encompass debate over both of these contrasting viewpoints. Such is the stuff of which electoral choice is properly made. And in making it, I believe that the American public will find the approaches of the Vice President to be the ones that best meet our national needs.

Stuart M. Gerson

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			
Cash on hand and in banks	10,500	00	
U.S. Government securities—add schedule	103,000	00	
Listed securities—add schedule	126,404	63	
Unlisted securities—add schedule	194,706	22	
Accounts and notes receivable:			
Due from relatives and friends	8,000	00	
Due from others			
Doubtful			
Real estate owned—add schedule	700,000	00	
Real estate mortgages receivable			
Autos and other personal property	50,000	00	
Cash value—life insurance			
Other assets—itemize:			
EPSTEIN BECKER & GREEN CAPITAL	50,000	00	
EPSTEIN BECKER DEFERRED COMP & DEBT	75,000	00	
EPSTEIN BECKER RETIREMENT TRUST	66,000	00	
Total assets	1,383,610	85	

LIABILITIES			
Notes payable to banks—secured	20,000	00	
Notes payable to banks—unsecured			
Notes payable to relatives			
Notes payable to others			
Accounts and bills due			
Unpaid income tax			
Other unpaid tax and interest			
Real estate mortgages payable—add schedule	171,000	00	
Chattel mortgages and other liens payable			
Other debts—itemize:			
Total liabilities	191,000	00	
Net worth	1,192,610	85	
Total liabilities and net worth	1,383,610	85	

CONTINGENT LIABILITIES None			
As endorser, comaker or guarantor			
On leases or contracts			
Legal Claims			
Provision for Federal Income Tax			
Other special debt			

GENERAL INFORMATION			
Are any assets pledged? (Add schedule.) No			
Are you defendant in any suits or legal actions? No			
Have you ever taken bankruptcy? No			

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U.S. Government securities (includes assets in IRAs)

Strips-TINT-U.S. Treasury	$80,000.00
Strips-U.S. Treasury (childrens' accounts)	23,000.00
(Total)	$103,000.00

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Listed securities (includes assets in IRAs)

MCA, Inc., 100 common shares	$6,403.00
Clorox Company, 150 common shares	6,075.00
Carlisle Cos, Inc., 100 common shares	4,375.00
Consolidated Freightways, Inc., 100 common sh.	3,187.50
Cyprus Minerals Co., 150 common shares	3,637.50
MFS Intermediate Income Trust SBI, 1,500 common shares	13,500.00
Burlington Resources, Inc., 100 common shares	4,425.00
Freeport McMoran Resource 150 depositary units	3,337.50
Automatic Data Processing, Inc., 100 common sh.	4,012.50
Bristol Myers Co., 100 common shares	4,825.00
Eastman Kodak Co., 100 common shares	4,850.00
H.J. Heinz Co., 100 common shares	6,350.00
Hershey Foods Corp., 200 common shares	6,950.00
Interpublic Group of Companys, Inc., 300 common shares	10,387.50
Marriott Corp., 200 common shares	8,100.00
May Department Stores Co., 200 common shares	9,450.00
Service Corp. International, 225 common shares	4,696.88
Waste Management, Inc., 150 common shares	8,681.25
Putnam Intermediate Government Trust, 662 shares	6,123.50
Navistar Int'l Corp., 300 common shares	1,600.00
Barnett Banks, Inc., 150 common shares	5,437.50
(Total)	$126,404.63

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Unlisted securities and other unlisted assets (includes assets in IRAs)

Clinical Information Advantages, Inc. debenture	$25,000.00
International Pain Resources, Inc. debenture	25,000.00
American Psychmanagement, Inc., 6,570 common shares	5,000.00
Indian Rock Vineyard, 1,909 common shares	3,000.00
Dental Benefit Providers, Inc. stock option	1,000.00
Shearson Lehman Hutton Growth Fund	14,475.10
Micron Technology, Inc., 200 common shares	2,875.00
Shearson Lehman Hutton Utilities Fund	12,146.39
Matterhorn Commodity Partners II, 3,614 shares	7,065.73
America First Financial Limited Partnership ("LP")	5,000.00
Jones Spacelink Fund LP	5,000.00
Shopco Regional Malls LP	10,000.00
Silver Screen Partners IV LP	30,000.00
United Savings America-Chicago Zero Coupon CDs	8,000.00
Shearson Lehman Hutton Daily Dividend Fund	9,444.00
EQ/Shearson Hotel Property LP	15,000.00
Jiffy Lube Income LP	10,000.00
CATS (CD)(Child's account)	6,700.00
(Total)	$194,706.22

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Real estate owned

Residence at 3 East Irving Street, Chevy Chase, Maryland (estimated market value)	$700,000.00

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Real estate mortgages payable

First mortgage held by Citicorp Mortgage, Inc. on residence (3 East Irving Street, Chevy Chase, Maryland)	$128,000.00
Second mortgage held by Frances S. Myers and Elizabeth S. Rinehart on residencee	43,000.00
(Total)	$171,000.00

CONFIRMATION HEARING ON D. GENE McNARY

TUESDAY, OCTOBER 3, 1989

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 2:41 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Edward M. Kennedy presiding.

Also present: Senators DeConcini, Simon, Simpson, and Grassley.

OPENING STATEMENT OF SENATOR KENNEDY

Senator KENNEDY. We will come to order. Today's hearing is to consider the nomination of Gene McNary to serve as the Commissioner of the Immigration and Naturalization Service.

The Commissioner holds an extremely important and sensitive position in the Department of Justice. The INS is the second largest part of the Department, after the FBI. It touches the lives of millions of people in the United States and around the world. In a sense, it is the trustee of one of America's most priceless assets, our immigrant heritage.

The INS is both an enforcement and service agency. It welcomes and processes large numbers of visitors to the United States each year, and it must also deal with those who come here outside the law. It provides a range of essential services, from naturalization to permanent residence, to approving petitions for family reunification.

These are difficult tasks under the best of times, and these are not the best of times for the INS. At a time of some budget constraints, Congress has imposed new responsibilities on the agency. INS is still grappling with the challenges of implementing the Immigration Reform and Control Act of 1986, with its historic legalization program that brought many undocumented aliens out of the shadows into the sunshine of lawful residence, and with its equally far-reaching provisions providing sanctions against employers who violate the law.

The new INS Commissioner must deal with all of these challenges and we welcome the opportunity to hear Mr. McNary's views on these issues. As we know, immigration issues are complex and there is a diversity of views. Today, we will have the opportunity to hear not only from the nominee, but also representatives of the communities and organizations most affected by the Commissioner's work.

So we welcome you to the committee, Mr. McNary, and look forward to your testimony. I know that you are joined here by two good friends, Senator Danforth and Senator Bond, and we are delighted to have them here to present you to this committee.

Congressman Gephardt, the House majority leader, will try to join us later in the hearing to express his support for the nominee. And perhaps most importantly, we know you have members of your family here, as well, whom we hope you will introduce to the committee after we hear from Senator Danforth and Senator Bond.

Senator Danforth, we are glad to hear from you.

STATEMENT OF HON. JOHN C. DANFORTH, A U.S. SENATOR FROM THE STATE OF MISSOURI

Senator DANFORTH. Mr. Chairman, members of the committee, thank you very much. It is a real honor to appear before the Judiciary Committee and to present to the committee Gene McNary.

Mr. Chairman, I have known Gene McNary for at least 21 years, maybe longer, but at least 21 years. Back in 1968 when I first entered political life, I was at that time a practicing lawyer and I decided out of the blue to run for attorney general of the State of Missouri. I had never run for office before, never held any office before. I knew nothing about criminal law, the criminal justice system, law enforcement.

And at that time, Gene McNary was the prosecuting attorney of St. Louis County, and I asked for his help. I asked for his help as a tutor and I asked for his help as a campaigner.

Back in the late 1960's, this country had something of a fixation on questions of law enforcement. Candidates for high political office were running under law and order banners, presenting some views to the public that they thought were popular, but, in the minds of some, violated constitutional tenets and basic rules of fair play.

It was my desire in running for the first office that I ran for, and particularly one that dealt with the criminal justice system, to stake out a position which was informed, knowledgeable, and yet was based on principles of fairness and justice.

And I sought out Gene McNary as my advisor, and he gave me advice and he traveled with me around the State of Missouri. We visited, I believe, every prison and juvenile detention facility in the State, or at least close to it, in an effort to elevate the campaign for attorney general into something more than handshaking and baby-kissing.

So I knew him when he was prosecuting attorney, and I have known him since as he has served as the executive of the largest county of our State. I know him as a person who is highly qualified, highly experienced in law enforcement, and also in administering a large and very diverse and very complicated political governmental system in our State.

Gene McNary is a good person. He is a sensible person. He is a person who is dedicated to fair play and dedicated to the principles of justice. When I heard that he had been nominated by the President for this position, I could not think of a better position for Gene McNary and I could not think of a better person for this job.

Does he have vast experience in the INS bureaucracy? No. How many people do? But does he have vast experience in administration, in the practice of law, in our system of justice? Yes, he does. And does he have commitment to our system of justice? I can speak to you from long experience; he does.

It is an honor, Mr. Chairman, to be before this committee and to present Gene McNary to the committee.

Senator KENNEDY. Thank you very much, Senator Danforth. That is a very compelling introduction and presentation of the nominee. We welcome receiving it, and we will hear from Senator Bond.

STATEMENT OF HON. CHRISTOPHER S. BOND, A U.S. SENATOR FROM THE STATE OF MISSOURI

Senator BOND. Thank you very much, Mr. Chairman. I, too, want to express our sincere thanks to the committee for scheduling this hearing for a friend, a constituent, and a colleague of ours.

Senator Danforth, as he has indicated, and I have known and worked with Gene McNary for many years. We are very proud that he has received this nomination from the President for a very important agency. And, certainly, Mr. Chairman, your comments about the sensitivity of the responsibilities of that agency are very well taken.

As I came down the corridor today and saw the overflow crowds, I was delighted to see that so many people were interested in the Immigration Service. I found as I got here that they were trying to get into the Finance Committee hearing, but we were——

Senator KENNEDY. We get the overflow. [Laughter.]

Senator BOND. But we are very pleased that there are so many people here.

Senator Danforth has touched on Gene McNary's background in law enforcement. I had the opportunity to work with Gene on many, many issues. Occasionally, we are on opposite sides of the political fence. I prefer to be on the same side of the political fence with him.

He is a man who can fight hard, however, and after the campaigns are over with, when it gets down to work, he is a person I have worked very closely with. I have come to appreciate his skill as an administrator. He was the chief executive officer of our largest unit of local government in Missouri, well over 1 million people, who faced very tough times, as I faced as Governor of Missouri, when revenues were not there.

He had to continue to provide services in times of tight budgets. He learned, I think, through effective, hands-on administration how to provide the services that are most important even in times of budgetary constraints.

I believe that his background in law enforcement, having served as a public defender and then as a prosecuting attorney, has well prepared him for the significant legal questions that arise in this agency.

And he has administered a judicial agency in the prosecutor's office, but also has had great experience in dealing with the problems faced by the people of many constituencies of St. Louis County.

I think that his record of achievement, his experience over the years in public service, will commend him to this committee. I think also you will find that Gene McNary, though, as Jack Danforth said, he has not had a background in immigration law, is a man who is very intelligent and will demonstrate to you, I think, his knowledge and understanding of these issues as you question him on them. And he is one, also, who will be willing, I know, to work with this committee as new legislation is developed or as questions arise on the administration.

For all of these reasons, Mr. Chairman, I join with my colleague in giving the highest recommendation to Gene McNary. I thank you for the opportunity to appear before you and I would urge you to give Gene McNary the highest consideration.

Thank you, Mr. Chairman.

Senator KENNEDY. Thank you very much, Senator Bond. We appreciate your willingness to come here this afternoon and make your views known. We always appreciate your presence here, but we know you have other responsibilities.

Now, I will recognize Senator Grassley and Senator Simon for any brief comments.

Senator GRASSLEY. I don't have any opening statement, but I do have a message that Senator Thurmond wanted me to give, and that is that he had to be called over to the Pentagon and can't be here, but he wanted it known that he fully supports the nomination.

Senator KENNEDY. I understand there are important events going on in Panama this very moment, so I hope Senator Thurmond will come back and enlighten us on those matters.

Senator Simon, who is a member of our Immigration Subcommittee, has taken a very deep interest, along with Senator Simpson, who is our ranking minority member on it. And Senator Simon has been one of the most active members in the U.S. Senate on the immigration issue, and we ask you to make any comments you so desire.

OPENING STATEMENT OF SENATOR SIMON

Senator SIMON. Thank you, Mr. Chairman. First of all, I have known Gene McNary slightly for some years. I have respect for his ability and his integrity. I do have some questions, some concerns, and one is no disrespect either to the President or to Gene McNary.

I think we ought to be asking a very basic question whether we should require some background in the field of immigration before we—and this is for the future, not for this nominee—whether we should, in fact, have some requirement in the law for someone who is going to head this very, very sensitive spot. If Gene McNary were up for Assistant Secretary of Transportation, there would be just no question in my mind about it.

The two fundamental questions I have are on sensitivity to those less fortunate, because that is a great deal of what you are going to have to deal with, and your attitudes on some of the fundamental questions that you are going to have to be facing. Those are the questions that I will be trying to probe and I will look forward to doing that.

Thank you, Mr. Chairman.

Senator KENNEDY. Very fine. Mr. McNary, would you care to introduce your family? I think I can identify your father out there, with the family characteristics, and perhaps the others as well, but would you care to introduce them?

Mr. MCNARY. Thank you, Senator Kennedy. First, I would like to introduce my father and stepmother, Earl McNary and Liz McNary. And I have been accused of looking like him before. [Laughter.]

My wife, Susan, is right here in the front row, and two stepdaughters, Ariana and Christina, are seated in the second row. I have three sons who are not here. One is a Navy pilot presently on a ship in the Aleutian Islands, and one in San Francisco. That is Mark, the Navy pilot. Cole lives in St. Louis and Wade, in San Francisco. So we are scattered throughout the country.

Senator KENNEDY. We have nothing against large families on this committee. [Laughter.]

We would invite you to make any comments that you would like, if you so choose—but if the nominee might just hold, as Senator Simpson has just arrived. We have just had the introduction, Senator Simpson, of the family, a very large family, and we were just about to get into the nominee's comments, but we always want to welcome Senator Simpson. He is the ranking minority member on the subcommittee currently, and he was the chairman of our Immigration Subcommittee for a number of years and was really the architect of the legislation, the 1986 Immigration Reform Act, and has spent an extraordinary amount of time on this whole issue.

As one who has spent some time on it as well, I think all of us can see that there is probably no one who is more knowledgeable than Senator Simpson. We even agree on occasion. Seriously, we agree on most occasions, and we all know we have a fairer and a more just immigration policy because of his constant efforts.

We will ask Senator Simpson to say a word.

OPENING STATEMENT OF SENATOR SIMPSON

Senator SIMPSON. Well, Mr. Chairman, you are very generous. When I came here in 1979, I took up some of those issues that you had spent a legislative lifetime on—refugees, immigrants—and your efforts are on the statute books and it has been a great pleasure working with you through the years.

It is nice to have you here, sir, and I appreciate this opportunity.

I am looking forward to hearing from you, Mr. McNary. The Immigration Service now for some time has been without a permanent Commissioner, and those periods of rudderlessness are not constructive for an agency as important as the INS, and I believe it is time we acted expeditiously.

You come to us highly recommended from your position in Missouri. During that time you managed a large bureaucracy with a significant budget. You were elected and reelected to public office. You dealt successfully with those day-to-day political issues that are so very difficult, to say the least, that people don't understand when you are doing the day-to-day job of politics.

We are all politicians here. I honestly respect those who take on the no-excuses-tolerated local issues like roads and housing and schools and jails. It is easy to sharpshoot those things until you serve on the county zoning and planning commission, and then you learn what hell is. [Laughter.]

So you have been reelected, and to me that says you performed your job well. You were a prosecutor and public defender. I am impressed by your commitment to public service, and I am confident you have had experience with just about every group imaginable—and if you haven't, you will—from law enforcement officers, defense lawyers, prosecutors, indigent defendants of every race, creed, color, the whole spectrum of the United States.

So that wealth of experience you have had before will add to your ability to deal with the very diverse clientele of the Immigration Service: legal and illegal immigration and refugees—all the spectrum. So your skills are going to be required. I am confident you will have much to offer us from the first day of your tenure as Commissioner.

I did note that there has been criticism of you by some of the various groups on various issues. The committee has inquired into those concerns seriously. I can tell you from my personal experience those are groups, some are groups which cannot be mollified or satisfied under any possible scenario.

If you solve one problem for them, they will invent another one just as valid, just as histrionic, just as passionate. I have seen that continually in my work with immigration.

So, find out what it is they are complaining about, nail them down on their question, try to answer it responsibly, and then when you do, in a rational way, they will invent another inquiry for you, which will be a diversion and a shunt.

Now, there, I left you all that tender material, and I just think you are a straightforward person. If some groups do not end up objecting to you simply for your forthrightness, then you sure will not have done your job.

Some question has been raised concerning your lack of prior immigration experience. That is another shunt in the process. I remind everyone that neither Commissioner Nelson nor Commissioner Castillo had any prior immigration experience. Yet, I do not recall opposition to either of their nominations based on that.

And so you are a seasoned administrator, and I am confident you will make a fine Commissioner. I look forward to the hearing, and I thank you, Mr. Chairman, for your courtesies.

Senator KENNEDY. Thank you very much.

I see the majority leader of the House of Representatives, a person who I know has had a longstanding knowledge of our nominee. We are appreciative of your presence here and we look forward to hearing from you for any comments you would like to make.

STATEMENT OF HON. RICHARD A. GEPHARDT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI, AND MAJORITY LEADER, HOUSE OF REPRESENTATIVES

Mr. GEPHARDT. I thank the Chairman and the members of the committee for the——

Senator SIMPSON. I didn't see you come in, and I apologize. I would have cut it right down. It is nice to see you.

Mr. GEPHARDT. I enjoyed your statement.

I appreciate very much the opportunity to be here, and consider it an honor. I came today to simply add to the introduction of Gene McNary, whom I have worked with, dealt with, and watched in action over a long, long period of time.

At one time, I was a member of the board of aldermen, or the city council of the city of St. Louis, at a time when Mr. McNary was the prosecutor in St. Louis County, and later, of course, the supervisor or the chief executive of St. Louis County.

I have also worked with him on many boards in St. Louis, including the Regional Commerce and Growth Association and other boards and various mechanisms that we have in St. Louis. And while I did not always agree, or we did not always agree on each and every issue, I simply want you to know that in my humble opinion, he has the tenacity, the ability, and the intelligence and the capacity to do this job in a first-class manner.

So I am here today to add my word of support by way of introduction, and to say that while I recognize with you that this is a tough and big assignment that he has been asked to fulfill by the President, I think he clearly has the capacity to fulfill it, and to fulfill it in an excellent manner. So I am happy to be able to come by.

Senator KENNEDY. Thank you very much, Congressman Gephardt. We appreciate your willingness to express these views and we thank you very much for coming over and joining us.

Mr. GEPHARDT. Thank you.

[The prepared statement of Mr. Gephardt follows:]

Talking Points

Thank you Chairman Biden, Senator Thurmond, and Members of the Judiciary Committee.

I wanted to come before you today to introduce to you a man I have known for many years.

Gene McNary, the President's nominee as Commissioner of the Immigration and Naturalization Service, is a longtime colleague of mine from St. Louis County, Missouri.

He has served as the Chief Executive of the County for four consecutive terms in office, since 1975.

And prior to that, acted as County prosecutor for 7 years.

Even though Gene is of a different political party affiliation than I am, I respect him for his years of conscientious service.

I have seen how effective he has been in managing the County government.

I have also seen Gene serving on various boards and participating in activities of many civic groups, including: the East-West Gateway Coordinating Council, Missouri Association of Counties, Regional Commerce and Growth Commission, and in establishing the Friendship Alliance with Beijing, China.

Gene has always been willing to go that extra step for his community --

-- he will serve his country as well in his position as Commissioner of the INS.

As successor to the outgoing Commissioner, Alan C. Nelson, he will have an important role in administrating the immigration process in this country in the coming years.

And as an advisor to the President on immigration policy he will have an even greater role.

So it is not lightly that I introduce Gene McNary today to this panel. I have seen him work conscientiously through the years, and I know he will continue to do so for the INS.

Senator KENNEDY. We will try this again. Mr. McNary, we will be glad to hear whatever comments you would like to make.

STATEMENT OF D. GENE McNARY, TO BE COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE

Mr. McNARY. Senator, I would just like to take this opportunity—I agree with Senator Simon that someone in this position should know something about immigration law, and while I am not an expert and I haven't lived with it as you have, I would like to introduce Steve Legomsky, who is my mentor, a professor at Washington University Law School in St. Louis. We have spent some time together and I just wanted to take the opportunity to introduce him.

Senator KENNEDY. We are glad to have you here.

Mr. McNARY. Mr. Chairman, members of the committee, I am honored and privileged to be nominated by the President for this position, and I look forward to your questions. I really have no opening statement beyond that.

Senator KENNEDY. Well, we will follow a 10-minute time limit on questions.

ADMINISTRATIVE SKILLS

I would like to first of all ask you about your administration skills. Much has been said about your capability as an administrator, and this would obviously be an asset, if confirmed. We are mindful of the Justice Department audit of early this year which pointed out a lot of the difficulties that the INS was facing in terms of administrative competency.

What do you think in your own background equips you to be able to run a billion-dollar agency and an agency with 14,000 personnel?

Mr. McNARY. Well, I suppose the mark of any good administrator is finding good people to form into an executive team. I think I have that capacity, and I have had a record of being able to do that not only as a county executive for 15 years, but as a prosecuting attorney I was able to attract some excellent lawyers, many of which—and they were Republican and Democrat—many of which are still in career positions—U.S. attorney, circuit attorney, prosecuting attorney.

I have done that same thing as a county executive. I have had budgets to balance, 15 of them, and we have been able to live within the revenues that were voted on and provided by the taxpayers consistently. That has required data processing, that has required purchasing controls, and that has required some pretty hard-headed budget type controls.

I think all of that is vitally important, and the INS is a challenge for me. Even though I feel as though I am equal to the task, any agency that is spread throughout, as this one is, fragmented to the extent that this one is, and decentralized to the extent that it is, I think it presents a challenge, but that is one of the reasons I like the opportunity.

Senator KENNEDY. Well, I would hope, should you be confirmed, and I expect you will, that you will get an opportunity to look through that audit just in terms of the administrative challenges.

RECORD ON MINORITY ISSUES

An area that has been raised in the course of the consideration of your nomination is one that we had a chance to discuss during our visit in my own office—but I think it is important for this committee and for the membership that you respond for the record—and that is the allegation that you have had a poor record on minority issues.

You know the various issues that have been raised. One was public housing in the late 1970's. You battled HUD over public housing; you were eventually upheld in the court. Your position to renovate random housing around the county rather than construct housing projects was criticized as an effort to disperse and hide minorities in the county.

You opposed court-ordered busing, a position held by people in both political parties, but were widely accused of using it as a racial issue in your 1984 gubernatorial race to gain white votes.

And then while the county contributes heavily to a nearby hospital in the city, you closed down a county hospital which served the county poor, and you did so by first shutting down the obstetric and gynecological services which affect the poorest of the poor. Notwithstanding your AMA support, again, you were accused of not being sensitive to the needs of the poor.

And then on the issue of mass transit, there has been criticism that you have generally been seen as being restrictive of mass transit, which again is obviously utilized by the poor.

There have been those who say that, cumulatively, this record has not demonstrated the kind of sensitivity to the underserved, whether poor or minorities, that we need in a Commissioner.

I want to give you a chance to respond to that in whatever way that you would like to. I have heard your response, but I think it is important for the record.

Mr. McNary. Senator, I think it is important for me at the outset to explain that St. Louis City and St. Louis County are separate jurisdictions. It is unlike any other jurisdictional arrangement in the country, so that the city of St. Louis has its own county offices, and within St. Louis County there are 90 municipalities.

So it is unlike—when you talk about these particular issues, it is unlike other jurisdictions where the city is really a part of the county. My constituents are different and have different objectives.

DESEGREGATION

Those four issues—first of all, the busing issue was not really at that point in time a busing issue. In 1980, it was a busing issue. Desegregation was something debated in the 1980 Senatorial campaign, and I ran with Tom Eagleton at the time and neither Eagleton nor I wanted to come out in favor of forced busing. I was opposed to it, he was opposed to it, and not many people in St. Louis or in Missouri would be in favor of forced busing who had any hopes of winning politically.

The district court thereafter, between 1980 and 1984, handed down a decision that held no liability on the part of the city of St. Louis. That decision went to the Eighth Circuit Court of Appeals and it was not only reversed, but a directive to the district court to draw up a desegregation plan and to include parties, St. Louis County school districts, that had never been a part of the main case—something that was unheard of. I thought that it was outside of the court's authority.

And then when they went one step further and the district judge at that time ordered the treasurer of the State of Missouri—purportedly, a sovereign State—to pay $100 million into the desegregation, the issue was raised whether—it was raised by the State treasurer whether or not he should obey this order and comply, thereby waiving the right to appeal, or whether he should raise the issue, protest, and somehow get a review.

My statement in that regard had nothing to do with desegregation. It had to do with framing the issue, which incidentally, I think, is still an issue. The Eighth Circuit Court of Appeals in Kansas City ordered a property tax increase to finance a desegregation plan, and that is presently being taken up by the U.S. Supreme Court.

My purpose at that time was to frame the issue, to get it to the U.S. Supreme Court, and be bound by that decision. It was my respect for the law, rather than a disrespect, that those comments were based on.

PUBLIC HOUSING

With regard to housing, people differ on their views as to the way to meet low-income housing needs. I came from the city that built Pruitt Igo, which almost everyone had agreed was a disaster, a monument to destroying the dignity of human beings, jamming people together with a neon sign, here are all our low-income people. And I opposed that, and I still oppose it.

We were bound by a congressional act which clearly stated that a housing plan should be left up to the local government. I think that was good law. HUD came in and said we don't care what the law says; we want new construction, and your housing plan, which calls for rehabilitated housing and housing that is located throughout the county, is not acceptable.

We argued and they would not yield, and we would not yield, and they said it is going to cost you $9 million in community development money if you persist. And that is when we went to the district court, and we won. We won because the law was clear that it was supposed to be left up to local government.

At the present time in St. Louis County, we have 5,500 housing units that are available to low-income people. They are distributed throughout the county. There is a helping hand without a stigma, and I still believe that that was a good call on the part of my local government.

PUBLIC HEALTH SERVICES

With regard to the hospital, it is not just a matter, members of the committee, of being given an award which is coming tonight by the AMA; it is a matter of two jurisdictions actually combining their efforts, each jurisdiction closing down an expensive, duplicative hospital.

We had a hospital that had the capacity for 200 patients with an average census of 60. I mean, we spent a lot of money that should go into health care on bricks and mortar, and they did the same thing in the city of St. Louis.

The mayor of the city and I got together with two civic leaders and put together a not-for-profit regional hospital that I think has been an outstanding success. It is actually demographically more convenient to those elderly and poor in St. Louis County than the previous county hospital which was located in Clayton, a fairly affluent community, and where nobody used the county hospital.

So it has been an accomplishment and something that I submit is exemplary, and one of the reasons the AMA is recognizing it is that it probably should be done in other jurisdictions. It is a savings.

Senator KENNEDY. Well, I appreciate that. My time is almost up, but I will try just briefly to wind up this area. I think the concerns that have been expressed both in some very fine newspapers and other comments are not so much whether you won or lost on these questions, but how you handled the issue—whether it was used in a way which was sensitive or used in an exploitative way. As I have read through both the newspapers and the editorials, that was the concern that was expressed.

You have written a letter to me which has been shared with the other members of the committee. In that letter, which I will include in the record, on this particular issue you say, "I want to assure you, as I have other members, that if confirmed, I will seek out and solicit regular input from those groups interested in our immigration process."

[The letter referred to follows:]

GENE MCNARY
41 SOUTH CENTRAL
CLAYTON, MISSOURI 63105

September 26, 1989

The Honorable Ted Kennedy, Chairman
Subcommittee on Immigration and
Refugee Affairs
United States Senate
Washington, D.C. 20510-6284

Dear Mr. Chairman:

I wanted to take this opportunity to thank you for taking the time to meet with me last week regarding my nomination as Commissioner of the Immigration and Naturalization Service (INS) currently pending before the Judiciary Committee.

I share your concern that the views, however divergent, of those groups affected by the work of the INS be given full consideration by the Commissioner in fashioning the policies of the Service. Toward that end I want to assure you, as I have other Members of the Committee, that if confirmed by the Senate, I will seek out and solicit on a regular basis input from those groups interested in our immigration process. I look forward to meeting with them and with interested Members of Congress as soon as possible after taking office.

Again, I want to thank you for your time and I look forward to developing an ongoing working relationship with the Members of your Subcommittee and other Members of Congress concerned with immigration.

Sincerely,

Gene McNary

Gene McNary

GM:jbs

cc: The Honorable Alan Simpson
The Honorable Paul Simon

ADVISORY GROUP

Senator KENNEDY. Different commissioners choose different ways of doing that. One of the ways which I think was very effective for Commissioner Lionel Castillo is he developed a representative advisory group with which he met with regularly. I recall as I visited with him during that period of time and afterwards, as well as with the advisory group, that it worked for him.

I am impressed by the fact that even prior to this committee meeting, you have been in contact with a number of different groups yourself even within the Justice Department's constraints. So I would hope that you might find that should you be confirmed, developing some kind of mechanism to be able to get some additional input from the various groups which are most affected by this agency would be helpful. I would hope that you would consider that.

Mr. McNARY. I will consider that, Senator, and not only that, but I intend to meet with them immediately if I am confirmed, and they should be a part of that decision—the best type of mechanism for the agency to be responsive.

Senator KENNEDY. Thank you very much.

Senator Simpson.

Senator SIMPSON. Thank you, Mr. Chairman. Indeed, those questions that Senator Kennedy raised will come from some of the groups who will be testifying today, and I will address those after they make their remarks because I think each and every one of them has a very clear explanation.

Senator Kennedy has well expressed that you indeed answered those questions in his presence during your contacts before this hearing, and you are here to answer those now—the issues of the poor and the homeless and housing, and not paying close attention to minority rights and remedies, and busing, and those things.

So I think from my research, you indeed have answered those things very well. Your receiving of the award tonight should take care of one of them very nicely, as you and the mayor of St. Louis receive an award from the American Medical Association for your extraordinary work in a regional health system with facilities closer to the areas where most of the St. Louis County's poor live. That is what the purpose of it was, wasn't it?

Mr. McNARY. Yes, sir.

Senator SIMPSON. The sole purpose. So I do know how that works here. Forced busing—good heavens, you can find people on both sides of the aisle on this one who would be right in the position with you and Tom Eagleton. So, that is a nonissue of its day in every sense.

People sitting on the committee today in both parties would not support that, if that is the litmus test. And, certainly, there is no one we respect more than Tom Eagleton, a great friend and a great guy to work with, I can tell you that—a superb fellow.

But there will be testimony on those things, and one of the things that will come in the testimony, in reading the record, will be a number of witnesses who will talk about the fear and distrust that the immigrant community has for the INS.

I would hope that that won't come up and we won't spend too much time on that one because there is a piece of the record that really should take that and just sweep it right out in the hallway. That is true distortion and hyperbole of the first water because the proof was in the pudding.

When the legalization program was created under the Immigration Reform and Control Act, we were concerned with that, too; so was Senator Kennedy, and all of us on the committee.

So we allowed illegal aliens to apply through the voluntary agencies, church groups, and community organizations, because we believed the rhetoric and the hooray that the immigrants feared the INS. We did believe that. We accepted the testimony. However, it was all from the usual testifiers.

The fact was that 80 percent of all of the amnesty applicants went right straight to the INS to claim their amnesty; walked right in the door, didn't have a bit of fear, didn't have a bit of distrust, and were treated beautifully and with great humanity, from Los Angeles to Bangor, ME. That is the way that worked.

So I hope we won't have too much testimony—oh, we will have it; I just hope it doesn't get too deep—about fear and distrust of the INS because 80 percent of the 1.7 million legalization applicants went directly to the INS for this extraordinary act of grace. So I just wanted to maybe get that in context.

MAJOR CHALLENGES AT INS

I would just ask you a question or two. You come highly recommended as a capable manager of large bureaucracies. What do you see from your preparation and your research and your homework—what do you see as the major management challenge at INS, and how would you address that?

Mr. McNARY. I think there needs to be stronger central control. I think, certainly, as a manager, those particular facets of management that I ticked off earlier are important, and it seems as though the INS has its own regions and, beyond that, the districts seem to be autonomous.

Whether there is total control at the central office, I don't know, but I do know that there needs to be a complete changeover in coordination so that the agency acts and responds as a unit, so that there is a common budget control, purchasing, and coordination.

I think that can be done with an executive team out of a central office that is in ongoing, day-to-day communication throughout the network. That is going to be quite a challenge.

Senator SIMPSON. Indeed, it is, and one of the INS problems has been the tremendous increase in workload, the slow movement toward automation. I assume you will expedite that proceeding.

VIEWS ON ACCESSIBILITY

I think there is one thing that is very important to all of us on the committee—and the witnesses are going to testify, according to their written testimony—and that is I would ask you how you feel about accessibility. I think that is so critical that you be accessible to the people that have the most concern, the ethnic groups, the Hispanic groups.

You didn't have to agree with Alan Nelson at all, agree or disagree, but he was accessible. He attended the LULAC conventions when invited, and sometimes even when he wasn't invited—I did that once—and the National Council of La Raza and MALDEF.

It is very important to be accessible to those people in their anxiety. As I say, Alan Nelson did that. Maybe they did throw a lot of things at him, but he did more of that than anyone I had ever seen.

I just wonder what is your view about accessibility to those most affected by anything you do—Asian groups, Hispanic groups, every group.

Mr. McNary. My record as a public servant has been one of being responsive, accessible, reaching out, and I would bring that to this job. And I think, Senator, maybe it is more than just attending a convention; it is ongoing give-and-take.

I think these organizations can provide valuable information on an ongoing basis, and it is not just for their benefit. I think INS can benefit by having that outreach and that feedback.

Senator Simpson. Well, I think it generates trust, and I wouldn't want to leave the impression that Al Nelson just did the conventions. He did the little meetings, the big meetings from coast to coast. He was totally accessible, and I think you are going to have to be that in this terribly tough task. And you are ready for that?

Mr. McNary. Yes, sir.

Senator Simpson. Good. Thank you, Mr. Chairman.

Senator Kennedy. Senator Simon.

Senator Simon. Thank you, and let me just underscore what Senator Simpson has said on accessibility. I think that really is important.

The question that Senator Kennedy directed your way is, I think, one of the basic ones. The St. Louis Post Dispatch was critical, saying you lacked sensitivity for those less fortunate. The hospital question you just answered answers it in part.

As I look over the various organizations that you belong to, what I do not see—and I don't mean this critically of any of these organizations—is that reaching out to those less fortunate—the Forest Lake Tennis Club, the Missouri Athletic Club, the Missouri Pilots Association, and so forth.

EXAMPLES OF SENSITIVITY

Can you tell me, whether it is today or 10 years ago or 20 years ago, something in your life that tells me Gene McNary is sensitive to those who are less fortunate, because these are a lot of the people you are going to have to deal with?

Mr. McNary. Well, you know, I can—you are asking to go back over a lifetime.

Senator Simon. Well, you can——

Mr. McNary. You know, I spent 2½ years as a public defender. I spent a lot of time up in the jail interviewing people charged with felonies and I went in and fought for them in the courtroom, and that is probably more experience with poor, minorities, and uneducated than most people get in a lifetime.

I continued on with that in private practice for a short period of time and as a prosecuting attorney. I think I still took that aspect with me in law enforcement, and my knowledge of preserving constitutional rights, individual rights, was a part of my law enforcement effort.

I would also tell you that—and you will say this isn't the less fortunate, but I spent 20 years with a little league program. I coached 30 teams; I bought the land. I was president twice, and it was a major effort in the community to work with kids.

I was very close to the special school district. I even taught a class of 5-year-old disabled children, which I would recommend to anyone as quite an experience. I backed, and was chairman for their tax increase to get more revenue for the special school district, which, as you know, in St. Louis is an outstanding district for disabled children.

Senator **Simon**. OK, I think you have answered my question, particularly, frankly, when you talk about the disabled. I think that is getting me a little closer to the heart of Gene McNary, and that is kind of what I am trying to probe here. Again, that accessibility that Senator Simpson mentioned, I think, is important.

VIEWS ON COURT ORDERS

I have a Post Dispatch article here; let me just read you three quick paragraphs.

> County Executive Gene McNary has criticized Governor Christopher S. Bond and Attorney General John D. Ashcroft for failing to fight hard enough against Federal court orders requiring Missouri to pay part of the costs of St. Louis school desegregation. "Had I been governor, we would not have paid a cent," McNary said. "What happens if a judge tells you to jump off the top of a building? Do you do it?" McNary asked.

Now, in fairness, I have been misquoted from time to time, but as Commissioner, if you get a court order to do something, are you going to be obeying that court order?

Mr. **McNary**. Yes, sir, I am going to obey that court order unless I feel as though it is appropriate to appeal it, and that is what I was doing there, too, was trying to find some way to appeal an Eighth Circuit Court of Appeals—it is not easy. There is only one—you know, you can't get a TRO from the U.S. Supreme Court, so it is not so easy at that level getting a review, and that is what that was all about.

CHINESE STUDENTS

Senator **Simon**. On policies that you are going to have to implement, we face a bill right now in the House that Senator Simpson, Senator Kennedy, and I are on the conference committee over here on regarding immigration relief for Chinese students on the J student visa.

I don't know if you have had a chance to look at that legislation or if you have any opinion. Have you had a chance to review the legislation, and have you had a chance to form an opinion?

Mr. **McNary**. No, and no. My opinion is that as many of you have already expressed, we need to be opening our hearts, really, to the Chinese. It is a difficult time, and I would intend to work with the Chinese community, as I have even in St. Louis, and would work with this subcommittee.

VIEWS ON IMMIGRATION REFORM

Senator SIMON. The immigration bill that passed the Senate—have you had a chance to look at that, and have you formed an opinion on it?

Mr. MCNARY. Yes, I have. I think it is excellent. Maybe I should qualify that in the interest of—the administration may have some technical changes they want to make. But as far as I am concerned, I think it is long overdue and a very complex problem and very well done.

MARIEL CUBAN DETAINEES

Senator SIMON. One problem that you are going to face and I sure don't know the answer for is a very difficult question, and that is the Cuban detainees. Have you looked at that problem at all?

Mr. MCNARY. You are talking about the Mariel prisoners?

Senator SIMON. Yes.

Mr. MCNARY. I have only looked at it really through what I have read in the newspapers enough to know that it is a difficult problem, and enough to know that I can't really address that without having more information that is available to INS people and to you, really.

Senator SIMON. But if you are approved, are you going to spend some time addressing that question?

Mr. MCNARY. Yes, sir.

Senator SIMON. It does seem to me we just can't keep these people in limbo indefinitely.

VISAS FOR HONG KONG

I see we have a vote on shortly here, Mr. Chairman. One more question right now. We have a per-country quota limit on immigration. Hong Kong has been more limited because it is not a country in the traditional sense. We have been able to increase the quota some from Hong Kong.

Do you have any thoughts, any reflections on that whole area?

Mr. MCNARY. Only that I thought that it was well handled, and I am not just passing off a possible argument, but as I recall, it is about 7,000. It could go down to 7,000 per country, and Hong Kong was increased and I don't recall to what. I think it went to 3,500. I think the principalities were 2,000.

Those numbers are foggy in my mind, but in any case, it was increased. I thought it was a fair distribution. I don't think that I would offer any amendment to it.

Senator SIMON. Yes. We have on the Senate side increased the numbers now to 10,000 for this year, 14,000 for the following year, and it should offer some relief.

LANGUAGE SKILLS AT INS

If I could just add one more question here, there have been complaints about the INS that we have too few people who speak the languages of the people they have to deal with. I am pleased to say that A.D. Moyers, your Chicago District Director, has done an excellent job of improving that situation, particularly as it relates to Hispanics and the Poles.

Any reflections on the desirability of trying to get people with language skills in the INS?

Mr. McNARY. My reflection is I have heard the same thing, and that it has been a problem. That is on the service side of the agency. I think that is an area where we can improve communication and probably, along with computers, expedite not only the processing, but the fairness, improve the fairness.

Senator SIMON. Do I have time for one more question, Mr. Chairman?

Senator KENNEDY. Yes.

SOVIET REFUGEES

Senator SIMON. All right. We are struggling right now with the question of how we handle the Jewish emigres from the Soviet Union, and some smaller numbers of Pentecostals. We have a lot of people who have been living in limbo. We have just shifted the processing to Moscow.

Have you had a chance to look at this whole problem at all, and do you have any reflections on that?

Mr. McNARY. Yes, and yes. I think that there is a genuine desire to continue the open-door policy. I think that we held out a certain commitment to Soviets that we would take them into this country, and then, of course, the numbers were beyond expectation and problems developed in Rome.

I am pleased that the people in the pipeline at the present time are going to be processed in Rome. I think that will take care of those people who really were in limbo and had taken their belongings and could not return.

The posture now to process out of Moscow has to be a No. 1 priority, and would be for me. And I don't have all the answers on how many staff people should be there. I know there are six at the present time and I know how many are being processed over what timeframe.

But this entire question has to be a front-burner item. It is going to have to receive my attention, and I intend and would commit to you to first of all meet with the subcommittee, make a trip quickly to Moscow to really see what the situation is, and then to come back and meet with the subcommittee on my return. I think that is vitally important.

The second thing is that there needs to be a better relationship, without casting any aspersions—I don't know that it is a bad relationship now, but I would try to work closely with the State Department. I think much of the capacity for solving the problem is with the State Department, and I can promise you that INS is going to meet the staffing needs to get the job done.

Senator SIMON. Thank you. Thank you, Mr. Chairman.

Senator KENNEDY. We will recess briefly. When Senator Grassley comes over, I would hope that he might commence the questioning—he went over to vote earlier—and then we will come back. I have a few remaining questions and then we want to get on to our panelists.

So we will stand in recess.

[Recess.]

Senator **Grassley**. Senator Kennedy, through staff, has given me the authority to go ahead to make use of the time while the other Senators are voting. It is my turn for questioning, and I thank Senator Kennedy for that opportunity.

I think you can judge the importance of your position, Mr. McNary, by the number of people who have been here. I hope you realize the importance of your job, at least if you measure it from the interest of the public who attend the hearings.

Mr. McNary, I welcome you again, as I had an opportunity to welcome you during a visit to my office. I appreciated that opportunity to visit with you.

You come into this position at a very crucial and pivotal time in our worldwide refugee situation. In this role, you will be called upon to make tough decisions, as well as have the opportunity to make a real difference.

With this in mind, I want to raise some issues that are of great concern to me, and I hope that you will keep them in mind as you assume your new role. And if you do keep them in mind as you are dealing with what I consider to be some bad policies of our Government, then you are going to need all that tenacity and ability that you have to fulfill the job, and you will have to call upon all that.

SOVIET REFUGEE PROCESSING IN MOSCOW

Mr. McNary, as you know from our private meeting, I have a number of concerns about our new refugee policy toward Soviet refugees and I would like to get your views on some of these issues.

United States processing of Soviet refugee applicants was moved from Rome to Moscow October 1. You saw on television last night that all our application forms were given out the first day. We are shipping over hundreds of thousands of new forms today. Presumably, there is great interest in immigration even under the new rules.

Have you considered how this move will affect the ability of applicants to freely apply for refugee status, particularly from the standpoint that there is a great amount of intimidation within the Soviet Union, even today under glasnost?

Mr. **McNary**. I have considered that, Senator. I don't have a firsthand feel or opinion about the extent of intimidation, but as I indicated earlier, one of my first moves would be to make a trip to Moscow and to see firsthand exactly what the situation is not only with regard to intimidation and fear on the part of Soviet refugees, but also how we might—if there is such a problem or extreme problem, how we might expedite processing so that we at least reduce it to a minimum.

Senator **Grassley**. Well, that is a worthy concern of yours and a worthy way to get firsthand information. I do not know how you will measure the fact that would-be applicants may be too afraid even to apply, where in other countries they have not had that concern.

POSSIBILITY OF REPRISALS

The INS always will ask applicants to prove their persecution, and they are going to be asked to do that, in the case of the Soviet Union, in the very country that oppresses them. Do you anticipate any reprisals from Soviets against applicants?

Mr. McNARY. I do not have an answer to that. I think that that is something that has to be closely monitored in our procedures. And, frankly, I think it is important for the INS to work closely with the State Department. Procedures may have to be modified, depending on what we find once the Moscow processing is in effect and we have some way to gauge.

So far, apparently, with the demand for applications, the numbers of people who have applied would indicate—or even those beyond the applications available would indicate that those people certainly were not intimidated, were in a position to come forward, and I think that is what we need to look for, and to be mindful that if that changes, maybe our procedures need to change as well.

Senator GRASSLEY. History teaches us that the Soviets have retaliated against their citizens by loss of jobs, loss of apartments, and other rights many citizens have been jailed simply for expressing the desire to leave. The fact that you are willing to revisit this policy is an openmindedness that I hoped I would hear from you, and I appreciate hearing that. You will have to be sensitive to these issues.

Mr. McNARY. I intend to do that. I think it is vitally important.

Senator GRASSLEY. One reason that the administration proposed moving from Rome to Moscow was economic; that with the processing occurring in Moscow, Soviet applicants would keep their jobs and their homes, and there would not be the expenses of food and lodging as in the other locations in Europe where applicants were processed.

Given the nature of Soviet society, isn't it possible that applicants still could continue to lose their homes and jobs just for having the desire to leave?

Mr. McNARY. That is possible.

Senator GRASSLEY. I think it is even beyond possible. And, again, you were not part of the policy, but I think it is naive on the part of our own Government to think that things have changed so much in the Soviet Union. The persecution that has been typical of that society is so deeply rooted, and we cannot count on things to change overnight just because of a new leader.

NEED FOR VOLUNTARY AGENCY HELP

In Rome, Jewish applicants had the assistance of the Hebrew Immigration Aid Society. Christian emigres could rely on such organizations as World Relief. Both are organizations that play a crucial role in guiding applicants through the immigration process and, to the extent to which they do that, saving our Government some money, as well as seeing that people aren't intimidated with the process.

Now, to date, the Soviets will not allow these voluntary agencies to operate in Moscow, and we know that the refugee status denial rate in Moscow is three times that of Rome. How will the absence of these organizations affect the refugee denial rate in Moscow?

Mr. McNary. Well, I think it will have a bearing, certainly. I would hope to work with the State Department—I think that is a State Department call—in trying to persuade the Soviets to allow those support organizations into Moscow. If they refuse, then I think that we are going to have to step up our administrative capability here and the support organizations will have to work out of the United States.

Senator Grassley. So far, I have no indications that these organizations will be able to operate in Moscow. Do you know whether our Government has taken any steps to see if they could operate within Moscow?

Mr. McNary. No, sir, I don't.

RATE OF PROCESSING IN MOSCOW

Senator Grassley. How many INS interviewers are stationed at the American Embassy in Moscow?

Mr. McNary. Six.

Senator Grassley. How many applicants can be interviewed per officer per month?

Mr. McNary. Nearly 1,000.

Senator Grassley. Currently, in Moscow there is a backlog of more than 40,000 refugee applicants, and added to the end of the list will be the new applicants. Do you think that 6 officers can be expected to interview 40,000-plus applicants?

Mr. McNary. Well, they can be expected to do that. It is going to be a longer time frame than I think is acceptable. But, again, that is going to take cooperation with the State Department. I would certainly be available and make the INS available to meet any needs that are determined.

Senator Grassley. Are you willing to consider the fact that six people may not be able to do the job. There were 20 adjudicators in Rome doing the job, where presumably it is even easier to accomplish. Could that number be increased?

Mr. McNary. That is not my call, or would not be my call if I am confirmed, but I would——

Senator Grassley. Would you recommend that the number of adjudicators be increased?

Mr. McNary. Yes, sir. I think that probably more staffers are required to expeditiously process those applications.

INS KNOWLEDGE OF PERSECUTION

Senator Grassley. Mr. Chairman, just one more question. Persecution in the Soviet Union is pervasive, as we all know, and spans its entire history. Refugee applicants have endured persecution in every aspect of their lives and culture.

Because of this long history and the nature of the totalitarian Soviet regime, applicants may understandably fear openly expressing this persecution even to American officials. Moreover, they may have difficulty fully expressing this persecution to anybody.

Have the INS interviewing officers received any sort of special training to sensitize themselves to the everyday environment of the totalitarian Soviet regime, particularly as they will be faced with an increasing number of applicants in Moscow?

Mr. **McNary**. Senator, I have been briefed in a very general way about that process. I haven't been put in place, and so I don't have answers to those questions.

Senator **Grassley**. If you found that the situation requires more staffing, and I think you will find that to be the situation, and if you find that the staffers do not have the proper background for it, I would implore you to see that they are so trained and sensitized to that problem because I think you are going to see that it is a very important obstacle to overcome if we are going to-service the number of people that need to be serviced.

Mr. **McNary**. Yes, sir.

Senator **Grassley**. Mr. Chairman.

Senator **Kennedy**. Thank you very much.

PROBLEMS IN ROME

Just a couple of questions and some comments. I am glad you are going to take on the whole Soviet issue. Particularly, I hope you will have a chance to go to Rome as soon as you can. We have spent about $35 million there already just in caring for people waiting there. There has been wide variety among individual INS inspectors and reviewers, distortions in the appeal process and more.

It has just been administrative chaos over there, and it really hasn't gotten very much better. We met earlier in the year with the Attorney General on it. I know he is concerned about it, but you would do a real service if you could get that worked out. We have had some legislative solutions to try and deal with the problems in Rome which I will bring to your attention at another time.

NEED FOR CONFIDENTIALITY

The other problem when we are talking about the issue of Soviet refugees is to ensure that when INS does its processing in the Soviet Union that applicants really get absolute confidentiality. That is going to be a very, very important issue because in these applications there is confidential material—particularly given the background of those applying, that they are people who have a very real fear of persecution. Obviously, there is a changed climate in the Soviet Union but there is still a good deal of anti-Semitism.

NEED FOR PUBLIC EDUCATION

Just a couple of additional areas. One is on the need for public education programs, both in terms of the employer and the employee under the 1986 Immigration Act. In many instances, the employers really aren't sure quite what their obligations and responsibilities are; and in a lot of cases, employees aren't either. All we want is compliance.

I think we want fairness to both employers and employees. So I would be grateful if you can take a look at the question of the education programs, which is a rather targeted issue, but it is an important one. Maybe you have some comment on it, but I generally just like to raise issues with the nominee prior to confirmation rather than surprise the nominee with them later. But I would hope that you might take a look at that issue.

NATURALIZATION

The second is on the naturalization of immigrants. There is enormous variation in naturalization rates between nationalities. The average for all nations is 45 percent. For the Philippines, it is up to 63 percent; Mexico, 24 percent. So there is enormous disparity between different groups. A number of the national groups have their reasons which contribute to the kind of disparity we see in the program. But there are also individuals who do have the necessary qualifications and are desirous of naturalizing, but there is an enormous backlog—in some instances, over a year—and that backlog has all kinds of implications in terms of their families, their reunification plans, and more. And I would hope that you might get a look at that particular issue.

ADJUDICATION BACKLOGS

And, finally I will take 1 more minute of the time of the committee. INS moved its Eastern Regional Office from Boston up to Burlington, VT, about 3 years ago. The greatest backlogs in the country are in our region. This is a result of the fact that we have in the Northeast a lot of different nationalities and a lot of movements of people, so there is an enormous backlog in that region.

I brought this up with Mr. Nelson before. He tried to bring about some changes. But we still have a situation where, for example, there isn't a possibility for anyone who calls the Immigration Service even to talk to anyone. Every phone call, every phone call—even if it is an emergency—every phone call is answered with a recording.

As a result, either people don't call back or they go to all of us who are interested in trying to help constituents. You will find that this is uniform among the whole Massachusetts congressional delegation. Basically, we are trying to do the job, and we are doing it with people who aren't always immigration experts.

But if you could just look at how that program is structured. I am sure it is happening in other places. I know it is in my part of the country, and people get enormously discouraged. The whole service aspect of the agency is one that I hope that you will pay some attention to, because it makes an enormous difference in people's lives, with their families and more. And that is an area that really hasn't gotten the kind of attention in the past that it deserves.

Well, those are just some comments. I don't know whether you would like to make any general comment on any of those items.

Mr. McNARY. I thought those were excellent comments and suggestions.

Senator KENNEDY. Fine, good, all right.

Mr. McNARY. And I will do what I can to straighten them out.

Senator KENNEDY. That is fine. There are some more general areas I would like to pursue—there are just a few that I will submit to you on the questions of amnesty and what is happening there on the standards and procedures for asylum; and more.

ENFORCEMENT MORATORIUM DURING CENSUS

But before I wrap up there is one I might mention to you. Commissioner Lionel Castillo, the last time we had a national census, halted immigration raids just because of what he called a "fear factor." He wanted to try to reduce it, particularly at a time when we were taking a census.

As you know, we are debating now whether to count just citizens or all persons for reapportionment purposes. I believe that we should count all persons. In the Constitution, our Founding Fathers made clear that they understood this. And we have done it this way for 190 years. But that is an issue in the census-taking.

There is diversity of opinion on this in the Senate. In fairness, I would say that those who favor just counting citizens lost by only about 8 or 10 votes the last time we voted on it. It is a constitutional issue. But, historically, it has been all persons who were counted, which means that you are going to count people who are aliens, whether they are here legally or illegally. That is at least what has happened historically.

The people who take the census are not trained individuals in terms of being able to detect immigration status. They have got training in how to take a census, but not in terms of a variety of other issues on questioning people. I heard what my good friend, Senator Simpson, said, but there is still, particularly in some parts of the country, real, genuine concern about the INS.

And just for that year while they were taking the census in 1980, we had a temporary moratorium. You might have your staff people take a look at it, maybe even give Lionel Castillo a ring and ask him about it and get some other different opinions on it. But by and large, I heard that it was meaningful and made a difference, and maybe you would just get a look at that.

Senator Simon.

Senator SIMON. Just a couple of quick comments to add on to what Senator Kennedy and Senator Grassley said. There is a real problem. People wait the 5 years. In Los Angeles and Houston, there is now better than a 1-year wait; in Miami, about a 10-month wait; Los Angeles, about a 6-month wait. That really should be speeded up.

POSSIBLE HEARING ON SOVIET PROCESSING

And on the Moscow processing—and I have not had a chance to talk to Senator Kennedy directly, but, through my staff talking to his staff, suggesting a hearing maybe in January on the whole question of the Moscow processing. I mention this simply because while January seems like a long way off, it will roll around very, very quickly.

Today's Associated Press has this report. This is the first paragraph of the story:

> Thousands of would-be emigrants lined up outside the U.S. Embassy for visa applications yesterday as new rules on emigration took effect, but the Embassy quickly ran out of new forms and turned away thousands of angry people.

We have a problem, and I think the sooner we deal with that problem effectively, the better off you are going to be, our Government is going to be, and these people who desperately need some help will be.

I have no further questions.

Senator KENNEDY. Just on that, they handed out 35,000 forms in 2 hours in Moscow, to give you some idea of the magnitude of what you are going to be faced with.

SHORTAGE OF REFUGEE FUNDING

Just a final point. The administration is about $100 million short in the next budget in terms of both the State Department and HHS refugee programs. Having consulted with the administration on the number of refugees that we are going to take, I know you are going to be about $50 million short in the State Department alone, and then the support for local agencies which is needed and, which is only fair; it is only fair to the refugees. The refugee program involves national decisions, yet we are going to be burdening local communities.

In many instances, those local communities are hard-pressed for services. We can show you in Lowell, MA, where local people have reached out. The school board has raised resources for their school district more than any other community in our State, and yet they are still so impacted.

And if the administration is not going to get that support, the weight of local opinion is going to fall on you. You should have your people give you a little briefing about that. We provided the numbers; then we said we will work with the administration to find the resources.

But, ultimately, INS' neck is going to be on the block on some of that, so we want to work with you on it down the road. Maybe you have already had that briefing, but I would hope maybe you would, as we would like to work with you to try to find ways of responding. It is a scarce cupboard, in any event, but this is something that you are going to be faced with.

I want to thank you very much for your presence here and for your responses to the comments.

Mr. MCNARY. Thank you, sir.

Senator KENNEDY. Senator DeConcini.

Senator DECONCINI. Mr. Chairman, thank you very much.

Mr. McNary, welcome. I have a number of questions, and I know you are burdened with a lot of those and time is going on. I am going to submit some of them.

INS PROBLEMS

But I do have a couple of things I want to take up with you, if I can. I have recently been briefed on a report that was prepared by the Justice Department on the Immigration and Naturalization Service. The report is extremely critical of INS. It describes major problems in leadership and management responsibility in accounting, hiring, a breakdown of operations, the debt collections, to mention just a few of the internal things that are a problem, as has been reported by INS within INS.

I would stress for the record that this report is not critical of you in any way; it is all prior Commissioners and prior management, because you obviously haven't been there. There appears to be very little direction and a great deal of confusion, frustration and morale problems within INS, as the basis for this memorandum.

The way I see it, Mr. McNary, you have a monumental job on your hands and it is going to be very demanding to come forward with some real management here and some changes, I suspect.

First of all, are you aware of this 20-page report that I have been briefed on and that I am making reference to?

Mr. McNARY. No, sir.

Senator DECONCINI. I would like to make it available to you, but that might pose some problems in the manner that I received it, and perhaps I can give you enough of it so you will know that it does come from within INS, and you can see for yourself that it isn't something I made up.

I don't know that it is all true, but it certainly comes from within INS and it is extremely critical. I would like to do that, if we could make arrangements to do that, before your vote on confirmation.

That being the case, I will just put off the rest of the questions dealing with that specific subject matter, and after I have made it available, you can read some or all of it and I would then ask you to respond on what you would do, assuming you are satisfied, once you are confirmed, that some or all of this is true. It is a very damning memorandum.

Now, I have another situation that I discussed a little bit with you when you came to my office, and thank you for coming by; it was very helpful to me and I am impressed with your background and knowing you a little bit.

Mr. McNary, I would like to focus on an issue of concern to my citizens. It is most parochial, although I suspect that there are other States facing the same problem. As I am sure you are aware, in April of 1988 INS consolidated its district offices into regional centers. Prior to this time, Arizona residents were served by the district office in Phoenix, AZ. The new regional office was located in San Ysidro, CA, serving Arizona, California, Nevada, and Hawaii. The INS claimed that this new center would increase efficiency in handling petitions. From the beginning, my staff in Arizona voiced concern over the lack of public telephone lines and a computer system that did not include log-in of petitions and other forms to allow tracking or retrieval of files for corrections or additions. My staff was told that telephone calls from the public would be "interruptions" in an otherwise fast, accurate, and efficient system which would better serve Arizona residents. My staff was also told that Arizona residents could expect a 60-day turnaround for processing petitions.

The INS subsequently decided to move the center from San Ysidro to Laguna Niguel, CA. Initially this move caused downtime due to moving and unpacking. But even worse, my staff was told that Laguna Niguel was too expensive a place to live for INS personnel, and that further delays could be expected while these employees were replaced and the new employees trained.

The net result of this so-called streamlining of INS processing is that Arizona residents have suffered undue hardship. The promised 60-day turnaround soon turned into 4 months, then 6 months, and in many instances up to 8 months. The cost of these delays in human terms is extreme. For example, when an Arizona resident wants his wife to join him from the Philippines, and the INS takes 6 to 8 months to perform a simple routine process that involves adjudicating a form, an American birth certificate, and a marriage certificate, the cost is not only precious savings to support two households and long-distance phone calls, but personal pain and suffering. One Arizona resident had a wife in the People's Republic of China. He filed a petition with the INS, but in the 6 months it took to process, the Tienneman Square massacre occurred and his wife is now unable to leave China due to the Government crackdown. I suspect they would have granted her permission, but even if they didn't, is it humane not to be given an answer? To me, it is clearly not humane.

I wonder if you are aware of any of this other than what I have just set forth here, if you have talked to anybody in the Agency since you have been nominated, and what, if anything, you plan to do about these regional centers.

Mr. McNARY. Senator, I don't want to be critical of anything that has happened to date. I would rather look forward to the future. I have to believe that I bring some experience with me to apply to these many problems, and I have heard the problems that you have mentioned.

If everything were smooth in this Agency, I don't know that I would want the job. It is because of some of the problems and the importance of the Agency and an opportunity to really streamline the service end of it that is appealing to me.

Senator DECONCINI. Well, based on what I have given you—and I don't know if you have heard any other complaints—do you plan a cost analysis of the western regional center? Do you plan to have someone look at this and investigate to see whether or not there is a time lapse of 6 or 8 months, or that there is no telephone answering, at least from cases that I can give you? What can I hope that you are going to do in this area?

Mr. McNARY. I am going to respond to your particular inquiry. I will look at that specifically, but I think that it is beyond that. I think that there are delays that are unacceptable. It needs to be streamlined and it may take a reorganization.

Senator DECONCINI. Mr. McNary, thank you for saying those magic words, "may take a reorganization." Let me ask you this. Are you familiar with regional centers, and do you support the regional center concept, or do you know that much about it?

Mr. McNARY. Well, I would rather answer that question after I have been in place for a while. I think that the regional center, as I know it, has a role. Whether that role should be changed, I have already indicated I think that there needs to be more central control over INS. That being the case, the regional centers and the district offices are going to change their roles. But if you are asking should they be eliminated, I am not prepared to say that.

ENFORCEMENT MORATORIUM DURING CENSUS

Senator DECONCINI. Let me shift quickly to one other question here. In 1980, then Commissioner Lionel Castillo declared a moratorium on INS raids and apprehensions within the United States so that all residents would feel free to come forward and be counted during the census.

Do you plan to call a similar moratorium if you are confirmed as Commissioner with the new census coming up?

Mr. McNARY. Well, you are assuming raids, and I don't understand the rule or the——

Senator DECONCINI. Well, maybe "raid" isn't a proper word. It is when the INS moves in unannounced in a facility, a company or a plant, with the proper legal authority to go in and check people's papers, to see whether or not they are legal. Mr. Castillo, during the last census, declared a moratorium on that so that they could get a real census as to how many are here.

My question is, Have you thought about it. No. 2, would you think of considering doing that because we have a census coming up next year?

Mr. McNARY. Well, I have thought about part of it. The part that relates to intimidating people, whether it is a census or anything else, I don't subscribe to that.

Senator DECONCINI. Well, you know, when you say intimidating people, anybody who is here illegally and somebody comes busting in the door, even with legal authority, they are intimidated. I understand that. I don't know how you get away from what appears to be intimidation.

Maybe this is a matter of definition of intimidation, of treating them rudely or using some physical force or something. But it seems to me that if we want a true census in this country, Mr. Castillo did a very important, short-period moratorium that helps a great deal so we know how many undocumented people we have here. It is very difficult to find that out, as you know.

Mr. McNARY. And I think that is very important, and would work for an accurate census.

Senator DECONCINI. So I can gather from that, Mr. McNary, that you will consider that as one of the options when you are confirmed, is that right? Is that a safe way to put it?

Mr. McNARY. Yes. Without getting myself committed, I would consider that.

Senator DECONCINI. Thank you. Thank you, Mr. Chairman.

Senator KENNEDY. Thank you very much. I hope you are going to do that review in New England as well, the same kind of thing you are doing for Dennis. [Laughter.]

You are a little more persistent, Dennis; the old prosecutor came out.

Senator DECONCINI. I am sure Mr. McNary is going to do it in Massachusetts after this hearing, Mr. Chairman.

Senator KENNEDY. We have some other statements and we will include those in the record.

[The prepared statement of Senator Thurmond follows:]

STATEMENT BY SENATOR STROM THURMOND (R-SC), REFERENCE THE NOMINATION OF GENE MCNARY, TO BE COMMISSIONER, OF THE IMMIGRATION AND NATURALIZATION SERVICE, OCTOBER 3, 1989, 2:30 P.M., SD-226.

MR. CHAIRMAN, THIS AFTERNOON WE BEGIN THE CONFIRMATION HEARING OF PRESIDENT BUSH'S NOMINEE, GENE MCNARY, OF MISSOURI, TO BE COMMISSIONER OF THE IMMIGRATION AND NATURALIZATION SERVICE. MR. MCNARY, I WOULD LIKE TO WELCOME YOU AND YOUR FAMILY HERE TODAY. I KNOW YOUR CONFIRMATION HEARING WAS ORIGINALLY SCHEDULED TO BE HELD ON SEPTEMBER 25TH BUT WAS CANCELLED AND RE-SCHEDULED FOR TODAY. I HOPE THAT POSTPONING YOUR HEARING UNTIL TODAY WAS NOT A MAJOR INCONVENIENCE FOR YOU AND YOUR FAMILY.

MR. CHAIRMAN, DONALD GENE MCNARY WAS BORN ON SEPTEMBER 14, 1935 IN MUNCIE, INDIANA. HE ATTENDED INDIANA UNIVERSITY WHERE HE RECEIVED A BACHELOR OF SCIENCE DEGREE IN 1957. HE CONTINUED HIS STUDIES AT INDIANA UNIVERSITY SCHOOL OF LAW WHERE HE EARNED HIS JURIS DOCTORATE DEGREE IN 1960.

FOLLOWING LAW SCHOOL, MR. MCNARY SERVED IN THE UNITED STATES ARMY UNTIL 1961 WHEN HE JOINED THE LAW FIRM OF LASHLY, LASHLY, AND MILLER. IN 1963 HE WENT TO WORK AS AN ASSISTANT PUBLIC DEFENDER FOR ST. LOUIS COUNTY. MR. MCNARY WAS IN THE PRIVATE PRACTICE OF LAW FROM 1965 UNTIL 1966. IN 1967 HE WAS ELECTED ST. LOUIS COUNTY PROSECUTING ATTORNEY WHERE HE SERVED UNTIL 1974. HE WAS FIRST ELECTED IN 1975 TO BE COUNTY EXECUTIVE FOR ST. LOUIS COUNTY, THE POSITION WHICH HE CURRENTLY HOLDS.

MR. CHAIRMAN, I AM CONFIDENT MR. MCNARY WILL BE A FINE COMMISSIONER FOR THE IMMIGRATION AND NATURALIZATION SERVICE AND THAT HE WILL BE SENSITIVE TO THE NEEDS OF ALL INDIVIDUALS WITH WHOM HE IS INVOLVED.

MR. CHAIRMAN, AS YOU KNOW, THE I.N.S. COMMISSIONER'S POSITION IS PRESENTLY BEING HELD BY AN INDIVIDUAL IN AN ACTING CAPACITY. FOR THIS REASON, I URGE THAT MR. MCNARY'S NOMINATION BE ACTED ON BY THIS COMMITTEE AND THE SENATE AS SOON AS POSSIBLE.

I WOULD LIKE TO EXTEND MY CONGRATULATIONS TO YOU, AND I LOOK FORWARD TO HEARING YOUR TESTIMONY TODAY.

Senator **Kennedy**. We want to thank you very much.

Mr. **McNary**. Thank you for your consideration.

Senator **Kennedy**. We appreciate it.

[The biographical information, questionnaire, and financial disclosure statement of the nominee follow:]

GENE McNARY

Birth:	September 14, 1935	Muncie, Indiana
Legal Residence:	Missouri	
Marital Status:	Married	Susan Ann McNary
Education:	1953 - 1957	Indiana University B.S. degree
	1957 - 1960	Indiana University School of Law J.D. degree
Bar:	1960	Indiana
	1961	Missouri
Military Service:	1960 - 1961	United States Army
	1961 - 1966	U.S. Army Reserve
Experience:	1961 - 1963	Lashly, Lashly and Miller Associate
	1963 - 1965	St Louis County Public Defender Office Asst. Public Defender
	1965 - 1966	Sole practitioner
	1967 - 1974	St. Louis County Prosecuting Attorney
	1975 - present	St. Louis County Executive
Office:	41 South Central 9th Floor Clayton, Missouri 63105 314 889-2012	
Home:	14380 Cedar Springs Drive Town and Country, Missouri 63017	

To be Commissioner of Immigration and Naturalization

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Gene McNary
(Donald Gene McNary)

2. Address: List current place of residence and office address(es).

Residence: 14380 Cedar Springs Drive
Town and Country, Missouri 63017

Office: 41 South Central, 9th Floor
Clayton, Missouri 63105

3. Date and place of birth.

September 14, 1935 - Muncie, Indiana

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married to Susan Ann McNary; maiden name: Susan Ann Blesi; former married name: Susan Ann Pippa.

Spouse's occupation: General Counsel
St. Louis County Economic Council
121 South Meramec
Clayton, Missouri 63105

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Washington University - 10/88 - 4/89; Executive Institute for Advanced Study.

Washington University - 8/88 - 12/88; Current Issues in International Affairs.

Washington University - 1/88 - 5/88; United States and China 1842 to present.

Indiana University School of Law - 9/57-6/60; J.D. - June 1960.

Indiana University - 9/53-6/57; B.S. - June 1957.

6. **Employment Record**: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Employment:

4/61 - 4/63 - Lawyer; Lashly, Lashly and Miller
4/63 - 9/65 - St. Louis County Assistant Public Defender
9/65 - 3/66 - Lawyer; self-employed (St. Louis office)
3/66 -12/66 - Lawyer; self-employed (Clayton office)
1967 - 1974 - St. Louis County Prosecuting Attorney
1975-present- St. Louis County Executive

Corporations, companies, etc.:

MIGWAC, INC., President '83-'89 (Corporation held title to personal airplane; only asset and no other shareholders; sold plane in '89 and dissolved corporation 4/89.)

7. **Military Service**: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

7/60-8/60; U.S. Army; enlisted man; Bloomington, Indiana
8/60-2/61; U.S. Army; enlisted man; Ft. Leonard Wood, Missouri
2/61-7/66; U.S. Army Reserve; enlisted man; St. Louis, Missouri
Rank: PVT; promoted to PFC
Serial No. BR 16 650 486
Honorable Discharge: 7/11/66

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Honorary Doctor of Laws; Maryville College-St. Louis; May 1979

9. **Bar Associations**: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Metropolitan Bar Association of St. Louis (Bill of Rights Committee)
St. Louis County Bar Association
Missouri Bar (Criminal Law Committee)
Indiana Bar

10. **Other Memberships**: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Regional Commerce and Growth Association; ex-officio member; 1975-1989; lobbies on business legislation.

Other Organizations:

Affton Athletic Association: 1961-1989; coach, board member, president
Aircraft Owners and Pilots Association; 1984-1989; member
Alpha Tau Omega; 1954-present; member
American Bonanza Society; 1988-1989;member
Demolay Legion of Honor; 1968-present; honorary member
East-West Gateway Coordinating Council; 1975-present;board member '75-'89; chairman '81-83
Forest Lake Tennis Club; 1988-1989; member
Gravois Kiwanis; 1966-1989; member; resigned 7/27/89
Indiana Bar; 1960-present; member
Indiana University Varsity Club; 1977-present; member
International Friendship Alliance of St. Louis County, Inc.; director and honorary chairman 1988-present
John Burroughs School; board member '79-'82
Metro Collegians Instructional Baseball League; 1981-1989; board member
Missouri Association of Counties; 1975-present; board member
Missouri Athletic Club; 1963-present; board member '71-'74; secretary '73
Missouri Bar; 1961-present; member
Missouri Pilots Association; 1983-1989; member
Moolah Temple AAONMS; 1969-present; member
Phi Delta Phi; 1958-present; member
Polar Star #79 A.F.& A.M.; 1963-present; chaplain '64; member
Royal Order of Jesters; 1974-present; member
St. Louis Club; 1975-present; member
St. Louis Track Club; 1982; member
Scottish Rite; 1969-present; member
Stadium Club; 1975-present; member
University of Missouri Alumni Club; 1987-present; member
Veiled Prophet; 1975-1989; member; resigned 7/27/89
Ex-officio member of numerous civic organizations: e.g., Civic Progress, St. Louis Art Museum, Missouri Botanical Garden, St. Louis Zoo, St. Louis Symphony, Regional Commerce and Growth Association; 1975-present.

11. **Court Admission**: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Indiana Bar; admitted 9/16/60
Missouri Bar; admitted 4/29/61
U.S. District Court; admitted 6/8/61
8th Circuit Court of Appeals; admitted 9/14/61
U.S. Supreme Court; admitted 6/21/71

12. **Published Writings**: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Guidelines for Fair Trial and Free Press; published in ABA Fair Trial and Free Press, Appendix Do's and Don'ts for Police Officers.
Missouri Law Enforcement Handbook; partly written and partly edited.
Businessman's Handbook; edited.
Educators Handbook; edited.
Missouri Law Enforcement Handbook II; edited.
State's Evidence; prosecutor's newsletter; partly written and edited.
Prosecuting Attorney Annual Reports - 1968-1973; partly written and partly edited.
Remarks before the House Appropriations Committee Subcommittee on Labor, Health & Human Services, Education and Related Agencies; 6/81; edited.
Testimony before the Senate Subcommittee on Pension, Savings and Investments, Finance Committee, U.S. Senate; 4/82; edited.
Address delivered to the Midwest Corrections Conference; 4/87; partly written and partly edited.
Speech at Teenage Health Consultants Recognition Ceremony; 5/88; partly written and partly edited.
Speech at ground breaking ceremony for expansion of John D. Murphy Family Center; 11/88; edited.
Remarks at Dedication of Police and Fire Training Center; 11/88; edited.
State of the County Messages; 1976-1989; partly written; mostly edited.

13. **Health**: What is the present state of your health? List the date of your last physical examination.

Excellent; 1/27/89

14. **Public Office**: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Public Offices:

1967-1974 - St. Louis County Prosecuting Attorney; elected '66 and '70. The duties included prosecution of felonies and misdemeanors. The office had 51 employees including 24 trial lawyers, 2 interns and 6 investigators, with a budget of $724,000.

1975-present - St. Louis County Executive; elected '74, '78, '82 and '86. The position is that of Chief Executive for a suburban county of one million population. (St. Louis County does not include the City of St. Louis). Approximately 400,000 citizens live in the unincorporated area over which I have duties comparable to a mayor. The administration includes 4,000 employees with a budget of $185 million. The duties include day-to-day management of departments which include highways, parks, public works, administration, human resources, health and hospital, revenue, corrections, economic development and the housing authority. The police department is accountable to a 5-man board appointed by the county executive with its budget controlled by the county executive.

Unsuccessful Candidacies:

1972 - Republican candidate for Governor
1980 - Republican candidate for U.S. Senate
1984 - Republican candidate for Governor

15. **Legal Career:**

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were clerk;

   None.

2. whether you practiced alone, and if so, the addresses and dates;

   Self employed:

   9/65-3/66 - 818 Olive
   St. Louis, Missouri 63101

   3/66-12/66 - 7811 Carondelet
   Clayton, Missouri 63105

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

   4/61-4/63 - Lashly, Lashly and Miller
   Associate
   714 Locust
   St. Louis, Missouri 63101

   4/63-9/65 - St. Louis County Public Defender
   Trial and Appellate Lawyer
   7900 Carondelet
   Clayton, Missouri 63105

   1/67-12/74- St. Louis County Prosecuting Attorney
   Elected Official
   7900 Carondelet
   Clayton, Missouri 63105

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

1961-1963 - General Practice
1963-1966 - Criminal Law - Defense
1967-1974 - Criminal Law - Prosecution

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

1961-1963 - Full spectrum of clients
1963-1965 - Indigent persons accused of felonies
1966 - Persons accused of crimes (mostly indigent)
1967-1974 - Represented the public in prosecution of those accused of crimes.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

1961-1963 - Occasionally
1963-1966 - Frequently
1967-1974 - Occasionally

2. What percentage of these appearances was in:

(a) federal courts;

1%

(b) state courts of record;

99%

(c) other courts.

None

3. What percentage of your litigation was:

(a) civil;

1%

(b) criminal.

99%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

30 - sole counsel
(also handled approximately 200 mental illness non-jury cases before a probate judge)

5. What percentage of these trials was:

(a) jury;

70%

(b) non-jury.

30%

16. **Litigation**: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) Case: State of Missouri v. Foster C. Jennings: Cause #258282; Robbery First Degree (1/13/64).

Court: Division No. 5; Judge Douglas L.C. Jones.

Summary: Flawed police work cast doubt on the prosecution's case, despite blood samples, confession and identification.

Participation: McNary represented defendant. State represented by prosecuting attorney, 7900 Carondelet, Clayton, Missouri 63105; 314-889-2610.

Disposition: 5/19/64 defendant found not guilty by jury.

(2) Case: State of Missouri v. Raymond Charles Milentz; Cause #257162; Burglary Second and Stealing (10/25/63).

Court: Division No. 5; Judge Douglas L.C. Jones.

Summary: Officer testified at preliminary hearing that defendant was arrested before crime committed. Testimony corrected at trial--too late.

Participation: McNary represented defendant. State represented by prosecuting attorney, 7900 Carondelet, Clayton, Missouri 63105; 314-339-2610.

Disposition: 1/17/64 defendant found not guilty by jury.

(3) Case: In Re: Stephen Lockett Lord; File #761; Mental Illness Hearing.

Court: Probate Court, St. Louis County; Judge David R. Hensley.

Summary: Mental illness hearing to determine whether young college student was mentally disturbed or could handle his own affairs. This was a rather rare situation where Probate Court agreed to release him and he subsequently became a solid citizen.

Participation: McNary represented Lord. Opposing attorney: David Crossen, 130 South Bemiston, Clayton, Missouri 63105; phone: 314-725-8788.

Disposition: 10/23/63 adjudicated to be mentally ill and ordered to be involuntarily hospitalized; 2/6/64 affidavit for appeal; 5/14/64 Lord discharged from The Jewish Hospital of St. Louis.

(4) Case: State of Missouri v. Rodney Glen Garrett; Case #253912; Robbery First Degree by Means of a Dangerous and Deadly Weapon (5/1/63).

Court: Division No. 4; Judge Herbert Lasky.

Summary: 4/23/64 defendant tried by jury and found guilty as charged; sentenced to 99 years in custody of Missouri Department of Corrections; 6/14/64 court grants defendant 90 days to file appeal; 4/26/65 case argued before Supreme Court of Missouri. Appealed on lack of concurrence of mens rea and conduct.

Participation: McNary represented defendant on appeal in Supreme Court.

Disposition: 6/14/65 Missouri Supreme Court affirmed the verdict and the defendant was sentenced to 99 years.

(5) Case: State of Missouri v. Mary Katherine Catlett; Cause #265292; Murder Second Degree (2/3/65).

Court: Division No. 10; Judge Drew Luten.

Summary: Young woman shot lover in the back of the head.

Participation: McNary represented defendant. State of Missouri represented by Assistant Prosecuting Attorney Edward P. McSweeney, 1015 Locust, St. Louis, Missouri 63101; phone: 314-621-3787.

Disposition: 5/12/65 defendant found guilty by jury of the offense of manslaughter; punishment assessed at 5 years in custody of Missouri Department of Corrections.

(6) Case: State of Missouri v. David Michael Lusk; Cause #291672; Murder First Degree (3/5/68).

Court: Division No. 5; Judge Douglas L.C. Jones.
Summary: Lusk and companion Swiggart took an intoxicant out to a cornfield and beat him to death simply for the "thrill" of it.

Participation: McNary represented State of Missouri. Defense attorney: Henry S. Morris, deceased.

Disposition: 7/10/68 defendant found guilty by jury; punishment assessed at death. The U.S. Supreme Court subsequently restricted the death penalty and defendant's punishment was commuted to life imprisonment.

(7) Case: State of Missouri v. David Lee Brandt; Case #289628; Murder First Degree (1/31/68).

Court: Division No. 5; Judge Douglas L.C. Jones.

Summary: Defendant shot and killed victim over domestic affair.

Participation: McNary represented State of Missouri. Defense Attorney: Alan G. Kimbrell, 1015 Locust, St. Louis, Missouri 63101; phone: 314-241-5282.

Disposition: 6/24/68 defendant found guilty by jury; punishment assessed at life in Missouri Department of Corrections.

(8) Case: State of Missouri v. Darryl S. Granberry; Cause #307986; Murder First Degree (12/12/69).

Court: Division No. 9; Judge George Cloyd.

Summary: Robbery of service station interrupted by police officer Downey who was shot and killed. Darryl Granberry was also shot at the scene.

Participation: McNary represented State of Missouri. Defense attorney: Al Harris; deceased.

Disposition: 10/29/70 defendant found guilty by jury; penalty assessed at death. The U.S. Supreme Court subsequently restricted the death penalty and defendant's punishment was commuted to life imprisonment.

(9) Case: State of Missouri v. James Granberry; Cause #307986; Murder First Degree (12/12/69).

Court: Division No. 1; Judge George Schaaf.

Summary: Same murder of Officer Downey, however James Granberry escaped the scene.

Participation: McNary represented State of Missouri. Note: Case was started by veteran prosecutor Joe Settich who died at the conclusion of evidence. McNary gave the final argument since he had tried the companion case. Defense attorney: Hal Coleman, Route 1, Box 881, Osage Beach, Missouri 65065; 314-348-2189.

Disposition: 8/30/71 defendant found guilty by jury; punishment assessed at death. The U.S. Supreme Court subsequently restricted the death penalty and defendant's punishment was commuted to life imprisonment.

(10) Case: State of Missouri v. Robert Lee Walker; Cause #309155; Murder First Degree (1/24/70).

Court: Division No. 7; Judge Kelly.

Summary: Walker and companion robbed jewelry store. Officer Boevingloh was killed answering the call. Defendant pleaded insanity.

Participation: McNary represented State of Missouri. Defense attorney: Sam Vandover, 720 Olive. St. Louis, Missouri 63101; phone: 314-421-1857.

Disposition: 4/17/71 defendant found guilty by jury; sentenced to life imprisonment.

17. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

(1) Upon being elected prosecuting attorney my objective was to make bipartisan appointments and to recruit interns from Washington and St. Louis University Law Schools (we affirmatively recruited and hired minority lawyers -- an office first). My goal was to administer a professional prosecuting attorney's office. Several lawyers in the office have made a career of prosecution including U.S. Attorney Tom Dittmeier (Republican), St. Louis County Prosecuting Attorney George "Buzz" Westfall (Democrat), and St. Louis Circuit Attorney George Peach (Democrat). Seminars and newsletters were provided for police officers to advise them of new legal rulings and acceptable techniques. There was always an emphasis on following the law and even-handed enforcement in police work.

(2) As County Executive I initiated an innovative work release program wherein the inmate served a short period of time in jail before he was transferred to a barracks-type dorm where he worked during the day in a county job. After a period of satisfactory performance the inmate was transferred to an apartment we renovated from old unused doctors' quarters and the inmate lived there while he worked daily at a job in the private sector. Resistance developed from residents around the apartments used, but this was met and overcome. Subsequently many inmates stayed in the private sector job upon release. Those who didn't still learned good personal and work habits and were prepared to find a job and enjoy a productive life.

(3) After failure of two jail bond issue votes, I designed a 96-inmate minimum security facility which eased the overcrowding and improved rehabilitation capability. The facility looks like a lodge. It has 5 wings and was built in-house by county public works employees and inmates for $800,000. I met with the labor leaders who objected to this type of arrangement and they agreed that the construction should go forward in the name of humanity.

(4) In 1979 St. Louis County was told by HUD that the county housing plan must conform to HUD's philosophy of new concentrated public housing. I believe HUD's philosophy to crowd low income people into new construction created a stigma and was inhumane. We opted for scattered rehabilitated housing and congressional intent clearly left the housing plan to local government. However, HUD threatened to withhold $9 million in community development funds if St. Louis County did not yield to HUD's dictates. We challenged their action and were upheld in the federal courts. Today St. Louis County has several thousand scattered rehabilitated units in neighborhoods with no stigma to the tenant. In fact, neighbors have no idea there has been a helping hand.

(5) Last year I led a delegation to Beijing to, first of all, establish a relationship with our Beijing counterparts and, secondly, to reach an agreement for mutual exchanges in business, trade, culture, education, sports, health, and tourism. We executed an agreement establishing an alliance which has continued with great success during the past year. Ongoing communications prevailed and our friends have since visited St. Louis. Even through the recent Chinese violence communications continued, and hopefully this kind of friendship alliance will endure gradually bringing our peoples closer together. In January St. Louis County organized and spearheaded a Chinese Festival Week commemorating the 10th anniversary of the reopening of U.S./China relations. It was highly successful with every St. Louis cultural institution participating with a visit from the Chinese Ambassador to the U.S., Hans Xu, at the Peking Opera which closed the festival.

(6) St. Louis County is fragmented with 90 municipalities and a large unincorporated area of 400,000. (As noted above, St. Louis County does not include the City of St. Louis). Gradually municipalities have left low income areas of the unincorporated area to fend for themselves while annexing valuable tax base to swell their own coffers. Though I knew it would be highly controversial and emotion-packed, I organized, with the cooperation of the Mayor of St. Louis, a Board of Freeholders to restructure St. Louis County taking into account boundaries and tax distribution. The Freeholders met for over a year and finally submitted a plan which would have been voted on by the citizenry at large. The Freeholders process, however, was challenged in the courts on the grounds that it failed to adequately protect non-property owners. The U.S. Supreme Court granted certiorari and held the Missouri constitutional Freeholder process to be in violation of the U.S. Equal Protection Clause. This put an end to the pending vote, but the groundwork has been laid for a subsequent constitutionally-organized citizens body to solve the jurisdictional and tax problems confronting St. Louis County.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   The St. Louis County Retirement Plan provides that I am eligible at age 55 having had 22 1/2 years of service. Benefits include 1.5% of final average compensation times credited service times actuarial reduction factor. This is a non-contributory plan. No benefits are paid until the earliest retirement age of 55. The pre-retirement death benefit which would go to my survivor calls for 50% of what my benefit would have been payable when I would have been eligible in October 1990. As of October 1990 I will be entitled to $1,138 per month for life.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   I do not anticipate any conflict of interest. I cannot envision any asset or prior employment which has the potential for a conflict. Should there be a question, I would consult with the Department's Designated Ethics Agency Official and in case of conflict, recuse or divest, as necessary.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated. If so, explain.

   No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   Copy of financial disclosure report attached.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

   Financial net worth statement scheduled attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   1962 - Precinct Captain, Concord Township, Precinct 5; Republican candidates. Volunteer; Curtis for Congress campaign: door-to-door canvassing.

   1966 - Republican candidate for St. Louis County Prosecuting Attorney.

   1968 - Assisted Senator John Danforth for Attorney General; advised and assisted candidate on probation and parole, Missouri corrections system and special law enforcement issues; traveled with candidate on occasion.

   1970 - Republican candidate for reelection - prosecuting attorney.

   1972 - Republican candidate for Governor of Missouri; defeated in the primary by Senator Christopher Bond.

   1974 - Republican candidate for St. Louis County Supervisor (title later changed to County Executive).

   1976 - Missouri Chairman for President Ford Committee.

   1978 - Republican candidate for reelection - County Supervisor.

   1980 - Republican candidate for U.S. Senate; defeated by Senator Eagleton.

   1982 - Republican candidate for reelection - County Executive.

   1984 - Republican candidate for Governor of Missouri; defeated by John Ashcroft.

   1986 - Republican candidate for reelection - County Executive.

   1988 - St. Louis County Chairman for President Bush.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

(1) 1961-1963 - I was a member of Lawyers Reference Service and had several non-paying clients. Also, accepted court appointments in federal, state, and juvenile courts.

(2) 1961-1986 - I served on the board of the Affton Athletic Association, a program which has served thousands of youngsters for the past three decades. As president in 1964, I located 15 acres of land and led a fund-raising drive to purchase the land. Subsequently 10 baseball fields and a hockey rink have been built there. Roughly 5,000 boys and girls each year participate in baseball, softball, football, hockey and soccer. I was involved in the legal work, purchase of the property, subsequent land acquisition for the road, and miscellaneous voluntary legal services for 20 years. I also coached 30 teams over the course of 20 years.

(3) 1963-1965 - I served in the Public Defender's Office for 2 1/2 years during which time I represented 400 indigent persons accused of felonies, approximately 200 persons who appeared before the probate judge on mental illness involuntary commitment hearings and 40 juveniles in Juvenile Court hearings. During this time I handled more than 300 preliminary hearings, as well as bail reduction and recognizance determinations for my clients. This experience gave me a greater understanding of the plight of the poor, minorities, and the uneducated.

(4) 1966 - I volunteered to represent several indigent persons charged with crimes. I had just started in my own practice and half of my time was spent doing pro bono work.

(5) 1967-present - I have held public office and have dedicated my life to the service of others. The examples that follow represent only some highlights of my career of service.

(6) 1967-1974 - As prosecuting attorney I organized a Youth Commission made up of high school students who participated in the full justice process, discussing controversial subjects e.g., obscenity and capital punishment, and had its own radio program. Each commission visited all the penal institutions in Missouri and wrote a final report which was published in the newspapers. I also organized a Narcotics Commission made up of interested citizens who worked in areas of education to reduce the demand, as well as with police departments to reduce traffic and supply of drugs.

(7) In 1975 I established the Department of Human Resources and included within that department the County Older Residents Program (CORP). CORP has grown to serve 30,000 older residents, 25,000 have been enrolled in a Senior Savers Program which includes 2,600 merchants participating. A myriad of services are provided by senior citizens themselves participating as volunteers. These include home visits, transportation to clinics, shopping, parks, legal services, tax assistance, and home security advice. They even have their own entertainers who participate in the Follies. These services are provided by 1,000 volunteers. The program has been successful beyond all expectations.

(8) Under my administration there has been an ongoing effort to revitalize older and distressed neighborhoods. The first such neighborhood was Meacham Park, an all black community which was greatly improved with new housing, streets, and sewers. Next was the Wellston area, which was deteriorated and destined for further decay as a result of the departure of Wagner Electric. We were trail blazers with the enterprise zone concept and with limited success have tried to attract industry and provide jobs to bolster the community. Recently a new police and fire training academy was built in this enterprise zone to help with stability. The latest project has been the relocation of residents in a Black community called Robertson which sits at the end of the runway at Lambert International Airport. Sound levels made living conditions unbearable and by working with the Urban League a successful relocation is underway into suitable housing and much improved living conditions.

(9) When I became chairman of the East-West Gateway Coordinating Council, a regional planning agency, the first priority was to rejuvenate the rail relocation project on the East side of the river which had significant socio-economic benefits for East St. Louis, as well as the entire region. The State of Illinois ultimately took over the project.

(10) Approximately 6 years ago the Special School District which has been a leader in educating disabled children had severe organizational and management problems. While the district is a separate political body and raises its own taxes, I took the lead in appointing an ad hoc committee of interested citizens to study the Special School District's structure and make recommendations for legislative change if necessary. The committee returned with several recommendations and while there are still problems from time to time, the Special School District has functioned in the best interest of the children. Recently I headed up a campaign to raise the tax rate for the Special School District which was successful. One of the most enlightening and heart-rendering experiences in my life was teaching a class of 5-year-olds who had varying disabilities, but varying capacities to learn and develop so as to have productive lives.

(11) St. Louis County's hospital has been located in Clayton, the county seat, by and large a middle to upper income community where most of the residents went to private hospitals. In cooperation with the City of St. Louis, we merged city and county public hospitals into a single regional hospital thus saving the high cost which results from the duplication of buildings and equipment, and shifted those funds into health care for patients. The hospital, while located in the City of St. Louis, is more convenient to the indigent county users. A comprehensive study was undertaken to determine the demographics on health care delivery and the major health clinic has been relocated to a Berkeley site which is convenient to the elderly and minority users. Another comprehensive clinic will be located in South County with satellite clinics disbursed strategically throughout the remainder of the county's 500 square miles. The ultimate effect will be to provide more hospital and health care at the same cost more conveniently to indigents and others in need.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

Missouri Athletic Club; 1963-1989; board member '71-'74; secretary '73. This was previously an all-male businessmen's club. The by-laws and membership now include women.

Masonic Order; 1963-1989. Member of Moolah Temple, Polar Star Lodge, Order of Jesters, Scottish Rite. All are male units under the Masonic umbrella. Also under the umbrella are female clubs, e.g. Eastern Star, Jobs Daughters.

Gravois Kiwanis; 1966-1989; member. This is a service organization. There are no by-law restrictions, but traditionally all male members. I resigned 7/27/89.

Veiled Prophet; 1976-1989; member. The by-laws have no restrictions, however tradition has been male members. The Veiled Prophet is responsible for the V.P. Fair and parade. It has approximately 1,000 members who support the city. Profits have been used to provide community improvements. I resigned 7/27/89.

AFFIDAVIT

I, GENE MCNARY, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Aug. 18, 1989
DATE

Gene McNary
NAME

District of Columbia)
)
City of Washington)

Subscribed and sworn to before me this 18th day of Aug., 1989.

NOTARY

My Commission Expires: March 14, 1990

Jane McNary

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including ba accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including deb mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members your household.

ASSETS			
Cash on hand and in banks	$ 193	328	00
U.S. Government securities—add schedule	19	990	00
Listed securities—add schedule	356	025	00
Unlisted securities—add schedule	111	141	00
Accounts and notes receivable:			
Due from relatives and friends	16	912	00
Due from others			
Doubtful			
Real estate owned—add schedule (residence)	214	000	00
Real estate mortgages receivable			
Autos and other personal property	50	000	00
Cash value—life insurance			
Other assets—itemize:			
Total assets	961	396	00

LIABILITIES			
Notes payable to banks—secured			
Notes payable to banks—unsecured			
Notes payable to relatives			
Notes payable to others			
Accounts and bills due			
Unpaid income tax			
Other unpaid tax and interest			
Real estate mortgages payable—add schedule (residence)	145	629	
Chattel mortgages and other liens payable			
Other debts—itemize:			
Estimated balance due on	(11	200	
Federal and Missouri			
income tax on 4/15/90			
(capital gain on sale of			
airplane).			
Total liabilities	145	629	
Net worth	815	766	
Total liabilities and net worth	961	396	

CONTINGENT LIABILITIES	NONE		
As endorser, comaker or guarantor			
On leases or contracts			
Legal Claims			
Provision for Federal Income Tax			
Other special debt			

GENERAL INFORMATION		
Are any assets pledged? (Add schedule.) NO		
Are you defendant in any suits or legal actions? NO		
Have you ever taken bankruptcy? NO		

SCHEDULE - LISTED SECURITIES

SECURITIES	SHARES	PRICE (8/15)	VALUE (8/15)	
Stifel-Nicolaus - IRA			$ 16,193	
Americus Trust General Motors Prime	675	78-3/4	53,156	
Alliant Computer - Conv. Bond 2012-07	22,000	47½	10,450	
Fries Entertainment Conv. Bond 2006-7.5	20,000	40	8,000	
Wyse Tech Conv. Bond 2002-6	26,000	43	11,180	
Americus Trust AT&T Scores	1,000	14-1/8	14,125	
Americus Trust Mobil Scores	1,000	8-5/8	8,625	
Dow Chemical Option Put Sep 95	10	1-1/16	1,062	
New Perspective Fund - Mutual Fund	4,265	11.72	49,985	(S)
Merrill Lynch - SEP (IRA)			24,000	(S)
Ramada Inc. - Common Stock	1,000	13-7/8	13,875	(S)
Twentieth Century Investors - Mutual Fund	1,227		8,591	(S)
Fidelity Investment - Mutual Fund			55,510	(S)
AT&T - Common Stock	100	38½	3,850	(S)
Merrill Lynch - IRA			16,600	(S)
Benquet Corporation - Common Stock	100	5	500	(S)
Twentieth Century Investors-Mutual Fund	852		6,018	(DC)
Bank America - Common Stock	150	30-3/4	4,612	(DC)
Trans America - Zero Coupon Bond			8,853	(DC)

SECURITIES	SHARES	PRICE (8/15)	VALUE (8/15)
Fidelity Mutual Funds			7,135 (DC)
Fidelity Mutual Funds			12,277 (DC)
MITSR - Bond Fund			4,081 (DC)
MITSR - Bond Fund			17,347 (DC)
		Total:	$356,025

(S) - Spouse
(DC) - Dependent Child

SCHEDULE - U.S. GOVERNMENT SECURITIES

SECURITIES	SHARES	PRICE (8/15)	VALUE (8/15)
U. S. Savings Bonds			$ 5,000 (S)
Treasury Investment Growth Receipts - Zero Coupon Bond			1,517 (DC)
Treasury Investment Growth Receipts - Zero Coupon Bond			6,605 (DC)
Treasury Investment Growth Receipts - Zero Coupon Bond			1,630 (DC)
Treasury Investment Growth Receipts - Zero Coupon Bond			5,238 (DC)
		Total:	$ 19,990

(S) - Spouse
(DC) - Dependent Child

SCHEDULE - UNLISTED SECURITIES

SECURITIES	SHARES	PRICE (8/15)	VALUE (8/15)
Blesi Leasing Company			$ 35,723 (S)
Central Markets, Inc. S Corporation - Stock			56,739 (S)
Bank of Sullivan - Common Stock	50		18,679 (S)
		Total:	$111,141

(S) - Spouse

Public Service - Public Trust

United States
Office of Government Ethics
P.O. Box 14108
Washington, D.C. 20044

SEP 1 1989

The Honorable Joseph R. Biden
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Mr. (Donald) Gene McNary, who has been nominated by President Bush for the position of Commissioner of the Immigration and Naturalization Service, United States Department of Justice.

We have reviewed the report and have also obtained advice from the Department of Justice concerning any possible conflict in light of the Department's functions and the nominee's proposed duties. Upon confirmation Mr. McNary has agreed to resign from his position as County Executive of St. Louis County. Based on the foregoing, we believe that Mr. McNary will be in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Frank Q. Nebeker by D.D.
Frank Q. Nebeker
Director

Enclosures

U.S. Office of Personnel Management

Financial Disclosure Report

Form Approved

Reporting Status (Check Appropriate Box)		Agency Use Only	OGE Use Only	Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Yr.)	Termination Date (If Applicable) (Month, Day, Year)
☐ Incumbent	☒ New Entrant, Nominee, or Candidate ☐ Termination Filer		AUG 8 1989		
Reporting Individual's Name	Last Name McNary	First Name and Middle Initial (Donald) Gene			
Position for Which Filing	Title of Position Commissioner	Department or Agency (If Applicable) Immigration and Naturalization Service			
Location of Present Office	Address (Number, Street, City, State and ZIP Code) 41 South Central, 9th floor Clayton, Missouri 63105	Telephone No. (Include Area Code) 314-889-2012			
Position(s) Held With the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held None				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No			
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.	Signature of Reporting Individual Gene McNary	Date (Month, Day, Year) May 18, 1989			
Other Review (If desired by agency)	Signature of Other Reviewer	Date (Month, Day, Year)			
Agency Ethics Official's Opinion The information contained in this report discloses no conflict of interest under applicable laws and regulations.	Signature of Designated Agency Ethics Official/Reviewing Official	Date (Month, Day, Year) Aug. 7, 1989			
Office of Government Ethics Use Only	Signature Frank Q. Nebeker	Date (Month, Day, Year) 8-31-89			

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A (except for BLOCK D), C, and D. (Candidates do not file Part II of Schedule D.

- **Schedule A**—The reporting period for Income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part I** (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part II** (Agreements and Arrangements)—Show any agreements or arrangements as of the date of filing.
- **Schedule D**—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

Notes marked with initials JS added by Janis Sposato, Justice Management Division

(Check box if comments are continued on the reverse side) ☐

PREVIOUS EDITION USABLE

NSN 7540-01-070-0444

SF 278 (Rev. 1/85)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name
(Donald) Gene McNary

Assets and Income

Page Number 2.

Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A [illegible] did you [illegible] purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

S or DC	BLOCK A Assets & Income Sources Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	BLOCK B Valuation of Assets Category of Value (X) None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	BLOCK C Income Type of Income (X) Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	Category of Amount of Income (X) None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	BLOCK D Transactions Test If yes, complete Schd. B Part I for those assets including those sold for a loss. YES	NO,
Examples	X Y Z Common				x				x									x								x	
	Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$50,000			
1	Merrill Lynch Certificate of Deposit					X					X								X								
2	Bruno Stolze-Securities Settlement Corporation			X							X						X										
3	United Postal Savings Stock Broker Account				X						X						X										
4	see p. 10 for list Stifel-Nicolaus-IRA of assets			X					X			X							X								
5	MIGWAC, Inc.-Distribution of S Corporation	X							X														X				
6	Americus Trust General Motors Prime					X			X			X					X										
7	Alliant Computer-Conv. Bond 2012-07			X							X						X										
8	Fries Entertainment Conv. Bond 2006-7.5			X							X						X										
9	Wyse Tech Conv. Bond 2002-6			X							X						X										
10	Americus Trust AT&T Scores			X								X					X										

PREVIOUS EDITION USABLE

SF 278 (Rev. 1/85)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name				
(Donald) Gene McNary	Assets and Income	Page Number	3	Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

▼

		BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
		Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)										If yes, complete Schd. B Part I for those assets including those sold for a loss.	
			None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
S or DC	Examples	X Y Z Common				x				x									x								x	
		Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$50,000			
	1	Americus Trust Mobil Scores			X								X						X									
	2	Silver King Mines-Common Stock	X							X							X								Sold			
	3	Ralston Purina-Common Stock	X							X			X				X								Majority of shares sold			
	4	American Cyanamid-Common Stock	X							X			X						X						Sold			
	5	Firestone-Common Stock	X							X			X								X				Sold			
	6	General Electric-Common Stock	X							X								X							Sold			
	7	Monsanto-Common Stock	X							X			X				X								Majority of shares sold			
	8	Bruno Stolze-Cash Equivalent Fund			X													X										
	9	Listed stock options (see pp. 9-10 for individual options)	X										X								X				Sold			
S	10	Blesi Leasing Co.-Real Estate Rental; Sullivan, MO				X										ptnrshp income	X								0	Family partnership — rent out four houses & factory		

SF 278 (Rev. 1/87)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0002

Reporting Individual's Name		Page Number	Schedule
(Donald) Gene McNary	**Assets and Income**	4.	A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

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Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

		BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
		Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)										If yes, complete Schd. B Part I for those assets including those sold for a loss.	
	S or DC		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
Examples:		X Y Z Common				x				x									x						—		x	
		Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$50,000			
1	S	Niagra Mohawk - Common Stock			X					X									X						sold after	5/18/89		
2	S	Hercules, Inc. - Common Stock			X					X								X							sold after	5/18/89		
3	S	Burnup & Sims - Common Stock			X					X							X											
4	S	Waste Management - Common Stock	X							X			X								X							
5	S	Browning Ferris - Common Stock	X							X			X							X								
6	S	Cenco, Inc. - Common Stock	X									X					X								sold after	5/18/89		
7	S	Orange Free State Investments Ltd.-Common Stock	X							X							X								sold after	5/18/89		
8	S	Free State Consolidated Gold Mines -Common Stock		X						X								X							sold after	5/18/89		
9	S	New Perspective Fund - Mutual Fund				X				X			X								X							
10	S	ASA Limited - Common Stock		X						X								X							sold after	5/18/89		

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SF 278 (Rev. 1/87)
5 CFR Chapter 734
U.S. Office of Personnel Management

Form approved
OMB No. 3209-0002

Reporting Individual's Name	Assets and Income	Page Number	Schedule A
(Donald) Gene McNary		5.	

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

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BLOCK A Assets & Income Sources		BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)						Other (Specify Type)	Category of Amount of Income (X)								Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If yes, complete Schd. B Part I for those assets including those sold for a loss.	
S or DC		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust		None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000			YES	NO
Examples:	X Y Z Common				x				x									x						--		x	
Examples:	Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$50,000			
1 S	Central Markets, Inc. S Corporation				X				X			X			S Corp. Income						X			$17,416	grocery store chain in Missouri		
2 S	U. S. Savings Bonds			X							X							X									
3 S	Boatmens Checking Account			X							X						X										
4 S	SEP Plan--See p. 9 for Merrill Lynch -individual assets				X				X		X																
5 S	Merrill Lynch - Ready Assets	X				(value $50,000-100,000 after 5/18/89 because it contains proceeds from sale of stocks sold after that date X			X								X										
6 S	common stock & Pan Am Corp. - Warrants		X									X				X								sold after 5/18/89			
7 S	Ramada Inc. - Common Stock			X					X							X											
8 S	Telefonos de Mexico Common Stock		X						X							X								sold after 5/18/89			
9 S	Bank of Sullivan - Common Stock			X					X								X										
10 S	Twentieth Century Investors Mutual Fund			X					X								X										

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U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0002

Reporting Individual's Name		Page Number		Schedule
(Donald) Gene McNary	**Assets and Income**		6.	A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

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BLOCK A Assets & Income Sources			BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐			Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)										If yes, complete Schd. B Part I for those assets including those sold for a loss.	
	S or DC		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
Examples		X Y Z Common				x				x									x						—		x	
		Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$50,000			
1	S	Fidelity Investments - Mutual Funds					X			X									X									
2	S	AT&T - Common Stock		X						X								X										
3	S	Canadian Pacific Ltd. - Common Stock			X					X											X				sold after	5/18/89		
4	S	Maxus Energy Corporation - Common Stock	X							X							X											
5	S	Sigma-Aldrich - Common Stock			X					X							X								sold after	5/18/89		
6	S	see list of assets Merrill Lynch - IRA p. 8				X				X			X															
7	S	Diamond Shamrock - Common Stock		X						X							X								sold after	5/18/89		
8	S	Benquet Corporation - Common Stock		X						X							X								sold after	5/18/89		
9	S	Monarch Capital Corporation - Common Stock			X					X							X								sold after	5/18/89		
10	DC	Boatmens Savings Account		X								X					X											

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U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name	Assets and Income	Page Number	Schedule
(Donald) Gene McNary		7.	A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

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		BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																		BLOCK D Transactions Test	
		Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)						Other (Specify Type)	Category of Amount of Income (X)									Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If yes, complete Schd. B Part I for those assets including those sold for a loss.	
S or DC			None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust		None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000				YES	NO
Examples		X Y Z Common				X				X									X							—		X	
		Doe Jones & Smith, Hometown, USA			X											ptnrshp income										$50,000			
1	DC	Boatmens Savings Account	X									X					X												
2	DC	Twentieth Century Investors- Mutual Fund			X					X							X												
3	DC	Bank America Common Stock		X						X							X												
4	DC	Treasury Investment Growth Receipts-Zero Coupon Bond				X						X							X										
5	DC	Fibreboard - Common Stock	X							X							X									sold after 5/18/89			
6	DC	Louisiana Pacific Corp. - Common Stock		X						X			X					X								sold after 5/18/89			
7	DC	Transamerica Finance Corp.- Common Stock			X							X						X											
8	DC	Fidelity Overseas & Growth Mutual Funds				X				X								X											
9	DC	American Federal Savings & Loan - Account		X								X					X												
10	DC	Chase Manhattan unit trust (invests in municipal bonds) Municipal Investment Trust Fund (MITSR)				X						X							X										

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OMB No. [illegible]

Reporting Individual's Name		Page Number	Schedule
(Donald) Gene McNary	**Assets and Income**	8.	A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

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S or DC		BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets: Category of Value (X)							BLOCK C Income: Type of Income (X)							Category of Amount of Income (X)										BLOCK D Transactions Test	
		Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If yes, complete Schd. B Part I for those assets including those sold for a loss. YES	NO
	Examples:	X Y Z Common				x				x									x						—		x	
		Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$80,000			
	1	County of St. Louis														salary									$115,384			
S	2	Economic Council of St. Louis County														salary												
	3	St. Louis Co. Pension - [illegible] per telephone conversation							*X							retirement income									$1,138/mo. starting Oct. 1990 if I live to be 55; if not, my wife is entitled to half that benefit for her life as of Oct. 1990.			
S	4	Merrill Lynch, IRA (see p. 6 for total value																										
	5	--AT&T common stock		X						X								X										
	6	--Walt Disney Co. Del			X					X							X											
	7	--Maxus Energy Crp. $4CV PFD		X						X								X										
	8	--ML Corp. Bond Hi Inc Cl. A			X							X							x									
	9	--ML Retirement Reserves	X							X							X											
	10																											

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U.S. Office of Personnel Management

Reporting Individual's Name		Page Number		
(Donald) Gene McNary	**Assets and Income**	Page Number	9.	Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

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Examples:	X Y Z Common				x				x									x						--		x	
	Doe Jones & Smith, Hometown, USA			x											ptnrship income									$60,000			
1 S	Merrill Lynch SEP Plan (see p. 5 for total values)																										
2	--Gemini II Inc. shs			X					X								X										
3	--CD Home Fdl s&L San Diego				X						X						X										
4	--ML Retirement Reserves		X						X								X										
5	Stock Options (see p. 3 for total values)																										
6	--Tandy Call	X										X					X								sold		
7	--Monsanto Call	X										X					X								sold		
8	--Eastman Kodak Call	X										X					X								~~sold~~		
9	--Coca Cola calls	X										X							X						sold		
10	--Merc call	X										X					X								sold		

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Reporting Individual's Name		Page Number	Schedule
(Donald) Gene McNary	**Assets and Income**	10.	A

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S or DC	BLOCK A Assets & Income Sources Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	BLOCK B Valuation of Assets: Category of Value (X): None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	BLOCK C Income: Type of Income (X): Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	Category of Amount of Income (X): None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	BLOCK D Transactions Test: If yes, complete Schd. B Part I for those assets including those sold for a loss. YES	NO
Examples	X Y Z Common				x				x									x						—		x	
	Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$60,000			
1	--General Motors call	X										X						X							sold		
2	--AT&T prime	X										X					X								sold		
3	--AT&T score	X										X							X						sold		
4	--Dow Chemical call	X										X					X								sold		
5	--Eastman Kodak score	X										X						X							sold		
6	Merrill Lynch IRA assets																										
7	--American Cyanamid common stock			X					X								X										
8	--Applied Biosystems common stock		X						X							X											
9	--Monsanto common stock			X					X								X										
10	--Money market fund (invests in bank cd's)		X								X					X											

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Reporting Individual's Name		Page Number		Schedule
(Donald) Gene McNary	**Assets and Income**		11.	A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000? ▼

	BLOCK A Assets & Income Sources	**BLOCK B** Valuation of Assets							**BLOCK C** Income																		**BLOCK D** Transactions Test	
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)											If yes, complete Schd. B Part I for those assets including those sold for a loss.	
S or DC		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
Examples	X Y Z Common				x				x									x						—		x	
	Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$80,000			
1	Merrill Lynch Ready Asset Acct				X						X					X								opened post 5/18/89 with funds			
2																								from partially repaid campaign loan			
3	Debt owed by McNary for Governor Committee														note									$59,678.64 ($40,000 repaid 7/89)			
4 DC	Merrill Lynch Ready Asset Acct (Susan McNary custodian)	X	(post 5/18 value $1,000-$5,000 because it contains proceeds of sale of Fibreboard & Louisiana Pacific)								X					X											
5																											
6																											
7																											
8																											
9																											
10																											

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SF 278 (Rev. 1/87)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0002

Reporting Individual's Name
(Donald) Gene McNary

Page Number	12.	Schedule C

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts.

NONE ☒

		Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (X)				
							$10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
S or DC	Examples:	First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1981	13%	25 yrs.			X		
		John Jones, 123 J St., Washington, DC	Promissory note	1979	10%	on demand	X				
1		None									
2											
3											
4											
5											
6											

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date (Mo., Yr.)
Example:	Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/83	[illegible] Smith, Home town, USA	[illegible] partnership agmt.
	When I reach 55, in October 1990, I will be entitled to collect pension benefits from the St. Louis County retirement fund, according to a fixed formula (1½ % of final average compensation multiplied by credited service multiplied by an actuarial reduction factor). St. Louis will not make any further payments into the fund after I resign. This is pursuant to the terms of the County's standard employee benefit plan on this subject. If I die before I reach 55, my wife is entitled to collect half the benefit starting October 1990. The full benefit by my calculation is $1,138/month.	County of St. Louis	

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Reporting Individual's Name
(Donald) Gene McNary

Page Number	13.	Schedule D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/83	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/78	11/83
	MIGWAC, Inc. *	Subchapter S. Corp.	President	8/83	4/89 (corp. dissolved)
	Beijing Friendship Alliance *	non-profit education	Director, Hon. Chairman	11/88	present
	East-West Gateway Coordinating Council, St. Louis, MO *	metropolitan planning	Board Member	1/75	present
	Metro Collegians Instructional Baseball League St. Louis, MO *	non-profit athletic	Board Member	5/81	present
	St. Louis County *	County Government	County Executive	1/75	present
	Missouri Association of Counties, Jefferson City, MO *	Intercounty association	Board Member	1/75	present

Part II
Compensation In Excess Of $5000
Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction
	St. Louis County	Services as County Executive

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Reporting Individual's Name
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Page Number	14.	Schedule D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/76	11/83
	St. Louis Art Museum, St. Louis, MO *	Art museum	Ex Officio board member	1/75	present
	St. Louis Symphony, St. Louis, MO *	Orchestra	Board Member	1/75	present
	St. Louis Zoo, St. Louis, MO *	Zoo/conservation	Ex Officio Board Member	1/75	present
	Missouri Botanical Garden, St. Louis, MO *	Botanical garden	Ex officio Board Member	1/75	present
	Civic Progress, St. Louis, MO *	non-profit civic org.	Ex officio board member	1/75	present

* WILL RESIGN ALL POSITIONS LISTED UPON CONFIRMATION PER L.D [illegible]

Part II
Compensation In Excess Of $5000 Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction

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Senator KENNEDY. Our first public panel consists of representatives of national Latino and Chinese American organizations. We welcome Cecilia Munoz of the National Council of La Raza. She will be followed by Arnold Torres, representing LULAC.

We also welcome Mario Moreno, of MALDEF, and Michael Zamba, of the National Association of Latino Elected and Appointed Officials; finally, representing the Organization of Chinese-Americas, Melinda Yee.

We welcome all of you. Your written statements will be placed in the record, and we ask that you briefly summarize your key points.

Ms. Munoz, you may proceed. I probably will have to be leaving. The remainder of the hearing will probably be chaired by Senator Simon. They have started on the drug bill over on the Senate floor, and as the chairman of the Labor and Human Resources Committee I have responsibility for the amendments dealing with education, treatment, prevention and research. So I am going to have to necessarily absent myself, but we are glad to have all of you here and I will read through the record.

Thank you.

STATEMENT OF A PANEL CONSISTING OF CECILIA MUNOZ, SENIOR IMMIGRATION POLICY ANALYST, NATIONAL COUNCIL OF LA RAZA; ARNOLDO S. TORRES, NATIONAL POLITICAL ADVISER, LEAGUE OF UNITED LATIN AMERICAN CITIZENS; MARIO MORENO, REGIONAL COUNSEL, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND; MICHAEL ZAMBA, WASHINGTON OFFICE DIRECTOR, NATIONAL ASSOCIATION OF LATINO ELECTED AND APPOINTED OFFICIALS; AND MELINDA C. YEE, EXECUTIVE DIRECTOR, ORGANIZATION OF CHINESE AMERICANS, INC.

Ms. MUNOZ. Thank you, Mr. Chairman, members of the committee. I am Cecilia Munoz, senior immigration policy analyst, for the National Council of La Raza. NCLR is a Washington, DC-based national organization which represents over 100 local affiliates, Hispanic community-based groups which perform a number of services to over 1 million Hispanics annually.

We appreciate the opportunity to appear before the committee today as it considers the nomination of Gene McNary for the critical position of Commissioner of the INS. The INS Commissioner has, really more than almost any other Government official, an enormous impact on the Hispanic community.

Not only do we feel most profoundly the enforcement mission of the Border Patrol, we also represent a large proportion of the applicants for immigrant status and for citizenship. Indeed, of the broad range of activities for which the INS is responsible, Hispanics feel the impact perhaps more than any other group.

The next decade, as the chairman pointed out, is going to present a number of important challenges to the INS. Particularly the Immigrant Reform and Control Act of 1986 revolutionized application processing and it revolutionized the service profile of the INS.

In addition to the challenges of administering the second stage of legalization, the INS will be faced with a tremendous battle as the newly legalized begin to petition for their family members. Clearly, the struggle which the INS has had to catch up with the growing need for its services is going to really become more difficult in the next decade.

Second, the enforcement arm of the Immigration Service, which has traditionally controlled the borders, has also been given the enormous new task of enforcing employer sanctions under the 1986 law. This new challenge, combined with growing evidence that sanctions are causing employment discrimination against people who are perceived as being foreign by their employers, makes the leadership of the INS absolutely critical to Hispanics and Asians.

The message of employer sanctions is being carried to U.S. employers by the INS. Each individual INS visit to an employer can determine whether or not that employer adopts unfair, discriminatory hiring practices.

The INS Commissioner's commitment to making antidiscrimination education as vital as sanctions education in the Service will make an enormous difference to Hispanics and Asians in this country.

We have a number of areas of concern with Mr. McNary specifically. Given the highly visible challenges which the INS is going to face, we are disturbed that the administration has selected a nominee for the INS with no experience on immigration issues, nor with the communities which will be most affected by his work.

Even in an uncontroversial environment, if such a thing were possible for the INS, the Commissioner's job is a very difficult one. It will be a daunting challenge for somebody with immigration experience; it could be overwhelming for someone without it.

Now, it has been pointed out to us that a number of Commissioners have been nominated and confirmed without immigration experience. We are, quite frankly, offended by the notion that the Immigration Service is somehow not important enough to merit an experienced Commissioner.

The committee recently rejected the nomination of an individual for a critical civil rights position primarily on the grounds that he lacked experience and expertise in the field. From the point of view of Hispanics, the position of INS Commissioner is critical. The same standard that is used for other comparable positions should be applied to this post.

In addition, while previous INS Commissioners have been confirmed without experience, it is not coincidental that the INS continues to have the reputation of a Government agency in disarray. I think that the Justice Department audit referred to by Senator DeConcini points this out. Allegations and evidence of mismanagement have plagued this Agency for decades. This clearly hasn't been helped by the continual appointment of inexperienced leadership.

NCLR is also concerned by some of the things the chairman brought up, particularly that there are organizations and newspapers in Mr. McNary's home base that have accused him of being insensitive to the poor and to minorities.

I think the chairman summed up those concerns very well, and he also pointed out that regardless of the outcome of these issues, what is really critical is the way that he handled these in a public forum.

There are indications that he may have used the issue of desegregation and the issue of low-income housing in such a way as to exploit racial tension rather than to defuse it. We think that his handling of the desegregation issue in the 1984 gubernatorial campaign is apparently one example of this.

This particular trait is very disturbing when you consider the nature of immigration debates in this country. Senator Simpson has often pointed out that immigration debates are inevitably charged with emotion and racial tension. This has been true throughout our history; this will be true in the next decade.

The vast majority of individuals affected by the Immigration Service are members of ethnic and religious minorities. The INS must be led by an individual with demonstrated experience and sensitivity in confronting issues of racial sensitivity. Quite frankly, we are profoundly troubled by Mr. McNary's background in these respects.

We also understand that we don't have any direct experience with Mr. McNary, and that the local issues which have been addressed today have various sides to them, and we appreciate hearing his side to that.

Quite honestly, we would prefer not to oppose this nomination, but we are looking for evidence of Mr. McNary's good faith and intention to implement policies with sensitivity to Hispanic and other concerns.

We will certainly consider carefully what we have heard today. I think we have heard some encouraging things from Mr. McNary. Quite frankly, there are a lot of issues which are out there to which we haven't heard adequate responses.

We encourage Mr. McNary, as we have been doing for several months, to meet with our organizations. We understand that the Department of Justice has discouraged him from doing so. We also understand that Mr. McNary has taken the initiative on his own to meet with Hispanic organizations, despite the Department of Justice telling him not to.

We would encourage him very strongly to meet with us prior to the confirmation vote. We think that would be a critical gesture of good faith on his part as we consider these very troubling issues.

We thank you for the opportunity to testify.

[The prepared statement of Ms. Munoz follows:]

TESTIMONY ON THE NOMINATION OF GENE MCNARY FOR COMMISSIONER OF THE IMMIGRATION AND NATURALIZATION SERVICE

Cecilia Muñoz
Senior Immigration Policy Analyst

National Council of La Raza
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Suite 300
Washington, D.C. 20002
(202) 289-1380

before the:

United States Senate
Committee on the Judiciary
October 3, 1989

NCLR
NATIONAL COUNCIL OF LA RAZA

I. INTRODUCTION

Good afternoon, Mr. Chairman, members of the Committee, I am Cecilia Muñoz, Senior Immigration Policy Analyst for the National Council of La Raza (NCLR). NCLR is a Washington D.C.-based national organization dedicated to improving life opportunities for Hispanics in the United States. The Council serves as a national umbrella organization for over 100 local "affiliates" -- Hispanic community-based groups which provide employment, education, health, housing, immigration, and social services to about one million Hispanics annually. Raul Yzaguirre, President of NCLR, has asked me to extend his regrets for not being able to appear before the committee this afternoon; he is currently on sabbatical at Harvard's Kennedy School of Government.

Because Hispanic Americans represent both the first and many of the most recent immigrants to the United States, NCLR has long made immigration one of its top priorities. The Council was extremely active in the debate which led to the Immigration Reform and Control Act of 1986 (IRCA), and is currently involved in the issue of legal immigration reform, which this Committee addressed last Spring. I appreciate the opportunity to appear before the Committee today as it considers the nomination of Gene McNary for the critical post of Commissioner of the Immigration and Naturalization Service (INS).

II. ROLE OF THE INS COMMISSIONER

The INS Commissioner has, more than almost any other government official, an enormous direct impact on the Hispanic community. Not only do Hispanics feel most profoundly the enforcement mission of the border patrol, we also represent a large proportion of the applicants for immigrant status or for citizenship. Indeed, of the broad range of activities for which the INS is responsible, Hispanics feel the impact more than perhaps any other group.

The INS has, since its creation in 1891, struggled to surmount the difficulties inherent in its mission to administer and enforce U.S. immigration law. After decades of underfunding and mismanagement, the INS was described in the 1970s as "teetering on the brink of collapse.[1] Since 1980, the INS has undertaken reforms focusing on management, service and enforcement functions. Despite impressive efforts, a Department of Justice Audit this year reported alarming administrative problems within the INS.[2] Clearly, despite impressive progress, the INS has great challenges ahead of it.

The next decade will also present a number of important programmatic challenges for the INS, which will prove critical to U.S. Hispanics. First, the Immigration Reform and Control Act of 1986 (IRCA) revolutionized both the application processing system and the service profile of the INS. In addition to challenges of administering the second stage of the legalization program, the service capacity of the INS will be severely tested when the newly legalized -- the vast majority of whom are Hispanic -- begin to petition to bring in their families, and eventually become eligible for citizenship. In the 1990s, the ability of the INS to catch up with growing need for its services will be of vital importance to our community.

Second, the enforcement arm of the INS, which has traditionally worked to control the borders, has been given the enormous new task of enforcing employer sanctions as a result of IRCA. This new challenge, combined with growing evidence that employer sanctions is causing employment discrimination against people who are perceived as "foreign" by their employers, makes the leadership of the INS absolutely critical to Hispanics and Asians. The message of employer sanctions is being carried to employers by the INS. Each individual INS visit to an employer can determine whether that employer responds to sanctions by adopting fair or discriminatory behavior. The INS Commissioner's commitment to making anti-discrimination education as much a priority as sanctions education could make an enormous difference in preventing discrimination from occurring.

And third, the current crises in asylum and refugee policy, particularly the recent establishment of detention facilities in South Texas, will present an immediate challenge to the next INS Commissioner. Amid accusations that asylum applicants are being denied due process South Texas, and increasing pressures on the asylum process by large numbers of Haitian applicants in Florida, the INS is very much in the spotlight. The individuals affected by asylum and refugee policy are primarily ethnic and religious minorities; the pressures of the next decade will require INS leadership which displays understanding and sensitivity to these groups.

II. AREAS OF PARTICULAR CONCERN

A. Lack of Experience

Given the highly visible challenges which the new INS Commissioner will face almost immediately, it is disturbing that the Administration has selected a nominee for the INS post who has no experience on immigration issues, nor with the communities which will be most affected by his policies. Even in an uncontroversial environment (if such a thing is possible for the INS), the Commissioner's job is a tough one. The range of responsibilities includes implementing an enforcement policy which controls the borders without infringing on fundamental rights, implementing a service for which the demand is growing faster than the agency's capacity to handle it, and confronting a body of law which is evolving more rapidly now than at any other time in U.S. history. It would be a daunting challenge for someone with immigration experience; it could be overwhelming for someone without it.

It has been pointed out to NCLR repeatedly that experience in immigration has not traditionally been a prerequisite for the INS Commissioner post. Indeed, the last several INS Commissioners have been nominated and confirmed despite their lack of experience. NCLR is offended by the notion that the INS post is somehow not important enough to merit an experienced leader. This Committee recently rejected the nomination of an individual for a civil rights post primarily on the grounds that he lacked experience and expertise in the field. From the point of view of the Hispanic community the position of INS Commissioner is absolutely critical; the same standard that is used for all other comparable positions should be applied to this post.

In addition, previous INS Commissioners have indeed been confirmed despite their lack of experience; it is not coincidental that the INS continues to have the reputation of a government agency in disarray. Allegations and evidence of mismanagement have plagued the agency for decades; this has surely not been helped by the continual appointment of inexperienced leadership.

B. Accusations of Insensitivity

NCLR was first alerted to the claims that Mr. McNary has displayed insensitivity to the poor and to minorities when the St. Louis Post-Dispatch printed a series of editorials opposing his nomination for INS Commissioner.[3] Naturally, any such allegations which emerge from Mr. McNary's home base must be taken seriously. The issues which have emerged which we find particularly disturbing include:

- McNary's consistent opposition to low-income housing in St. Louis County, including waging a harsh public campaign against HUD over subsidized housing. McNary's position led then HUD Secretary Patricia R. Harris to say that "McNary was fighting not HUD, but the poor in St. Louis County;"[4]

- In 1984, while running for governor, he made desegregation a major campaign issue by announcing that, if he were governor, he would disobey a federal court order on busing, saying, "What happens if a judge tells you to jump off the top of a building? Do you do it?"[5] He "demagogued" the desegregation issue throughout the campaign, according to the Post-Dispatch, using racial tension to his political advantage;

- According to some critics, he has almost single-handedly dismantled health services for the indigent in St. Louis County, waging a campaign in the late seventies which began with his attempts to defund obstetrics and gynecological services of St. Louis County Hospital and culminated in the closing of the hospital.[6] Critics claim that this has made it more difficult for indigent persons to seek medical care in St Louis County;

- More recently, he has been accused by advocates for the homeless of being insensitive to issues of poverty. According to activists for the Missouri Coalition for the Homeless, he has consistently refused to admit that there were homeless people in St. Louis County, forcing already overworked city services to serve the county's homeless. A number of groups have formed a coalition against the McNary nomination, and have collected as many as 3000 signatures to support their cause.[7]

The National Council of La Raza understands that these are complicated local issues, and that there sides of the story of which we may be unaware We have no direct experience with Mr. McNary, and have not had an opportunity to hear his response to these allegations; we are anxious to hear from him today.

Even if Mr. McNary's troubling positions on these issues can be explained, his comments on each of these matters are in and of themselves disturbing, because they convey a potential lack of sensitivity to the poor, to minorities, and to the most disenfranchised in St. Louis County. Even more distressing than the outcome of each of these particular issues is the way that Mr. McNary addressed them before the public. Not only did he display insensitivity, he did it in a way which appeared to exploit the racial tension which unfortunately colors these kinds of issues, rather than defusing such tension. His handling of the desegregation issue in the 1984 gubernatorial race is apparently another example of exploiting racial tension for political advantage.

This element of Mr. McNary's history is particularly disturbing when one considers the nature of the immigration arena. As Senator Simpson has often pointed out, immigration issues are almost inevitably charged with emotion and racial tension. It is an unfortunate part of our nation's history that the same series of false accusations have been leveled against every major immigrant group to enter the U.S. since the beginning of our history as a nation. The next decade will be no different. Because immigration issues are highly sensitive, because unfortunate statements and sentiments do get expressed in the immigration context, and because the vast majority on individuals affected by the Immigration Service are members of ethnic and religious minorities, the INS must be led by an individual with demonstrated experience and sensitivity in confronting issues of racial sensitivity. Mr. McNary's background in this regard is profoundly troubling.

III. RECOMMENDATIONS

The National Council of La Raza is deeply concerned about Mr.McNary's lack of experience and his history of apparent insensitivity to the poor and to minorities. However, because neither our organization or any sizeable segment of our community has had any direct experience with Mr. McNary, and because he apparently has a strong record as an administrator, NCLR would prefer not to oppose the nomination, but, instead, to obtain evidence of Mr. McNary's good faith and intention to implement policies with sensitivity to Hispanic concerns. The following issue areas are of particular interest to Hispanics:

- Access - It is particularly important for a nominee who is new to working with immigrant communities to display a willingness to develop a relationship with groups which have worked in the field for years. Possible suggestions for Mr. McNary to implement include:
  - Establishing an Advisory Commission to the Commissioner's office composed of representatives of the ethnic groups most affected by immigration policy. By establishing a formal process with access to information and regular contact with the Commissioner, Mr. McNary would expose himself to issues and concerns with which he currently has no experience; and
  - Increasing significantly the number of Hispanics and Asians appointed to high-level INS positions;
- Census Moratorium - In 1980, then INS Commissioner Leonel Castillo declared a moratorium on INS raids and apprehensions within the U.S. in order to reduce the "fear factor" which prevents many undocumented and documented persons living in the U.S. from being counted in the census. A similar gesture by Mr. McNary would be very important as the nation works towards an accurate census count;
- Naturalization - The smooth operation of the naturalization process is also an area of critical importance to a number of communities. There is clearly a need to reform the citizenship application procedure to make it more accessible to potential applicants. The participation of community organizations familiar with the immigrant community would go a long way in building goodwill between ourselves and the INS, and in developing a process which encourages, rather that discourages applications for citizenship;
- Anti-discrimination - The INS has the principal enforcement responsibility under the Immigration Reform and Control Act of 1986 (IRCA). There is increasing evidence that employers are discriminating against people who seem "foreign" to them. Because this problem is happening on a large scale, and because it is frequently due to lack of information, the INS Commissioner plays a critical role in preventing discrimination under IRCA. Strong leadership from Mr. McNary in educating the INS staff about IRCA's anti-discrimination provisions, and in supporting public outreach programs involving community organizations is absolutely critical to Hispanics and Asians who are being denied job opportunities unlawfully under employer sanctions;
- Commitment to Service - There is an historic gap between the INS' enforcement and service budgets. Demand for INS service, which has been expanding steadily in the 1980s, is likely to increase dramatically in the next decade. A commitment from the INS Commissioner to enhance its service mission would increase the INS' capacity to keep up with the demands placed upon it;

- Respect for Civil Rights and Liberties - Deep-seated tensions between the INS and Hispanics and other affected ethnic groups will not be reduced solely by increasing service functions. A pledge from the new INS Commissioner to make an institutional commitment to end abuses and offensive statements by INS employees, and to enhance the outreach mission of the service would do a great deal to improve relations between the INS and the communities which feel the impact of its work.

IV. CONCLUSION

Though we have serious concerns about his inexperience in the immigration field and his record on issues of sensitivity to minorities, the National Council of La Raza recognizes that we have had no direct experience with Mr. McNary. We encourage members of the Committee to ask the nominee specific questions about his background and about future INS challenges which will be critical to Hispanics and other groups. We understand that a nominee cannot make policy commitments at a confirmation hearing; however, we will be listening carefully to Mr. McNary's responses, to assess his commitment to learn about and work with the communities which will be affected by his policies, and his understanding of his responsibility to abide by the law.

Though the Department of Justice has discouraged our attempts to meet with Mr. McNary prior to his confirmation hearing, we urge him to meet with us in the period preceding the actual vote on his confirmation. We will be making our assessment of the nominee based on his response to our and the Committee's concerns today. If we find that his responses address the concerns about his background and his commitment to rise to the challenges ahead with a sense of commitment and fairness, then NCLR will not oppose the nomination. However, given the importance of the INS Commissioner's post, the challenges facing the INS, and the concerns we have expressed today, if Mr. McNary's responses prove inadequate, NCLR will ask this Committee to oppose his nomination.

ENDNOTES

1. John Crewsdon, The Tarnished Door: The New Immigrants and the Transformation of America, (New York, NY, Times Books), 1983, p. 114.

2. U.S. Department of Justice, "Special Audit of the Immigration and Naturalization Service," February, 1989.

3. "The Wrong Man for the Job," St. Louis Post-Dispatch, May 15, 1989;

   "INS Needs an Experienced Commissioner," St. Louis Post-Dispatch, August 8, 1989;

   "The McNary Era Closes," St. Louis Post-Dispatch, August 15, 1989;

4. "McNary Fight Is With Poor, HUD Asserts," St. Louis Post-Dispatch, July 5, 1979.

5. "McNary Alleges Failure to Fight Court," St. Louis Post-Dispatch, March 6, 1984.

6. "McNary's Health-Care Cuts Under Fire," St. Louis Post-Dispatch, November, 18, 1979.

7. "Advocates of Homeless, Poor to Fight McNary's Nomination," St. Louis Post-Dispatch, August 24, 1989.

Senator KENNEDY. You may begin, Mr. Torres.

STATEMENT OF ARNOLDO S. TORRES, NATIONAL POLITICAL ADVISER, LEAGUE OF UNITED LATIN AMERICAN CITIZENS

Mr. TORRES. Before I begin on the timer, I would like to simply indicate a typographical error on page 3 of our testimony. Where we read on line 4—there should be a "we are not here," as opposed to "we are here to oppose." We are not here to oppose Mr. McNary on this point.

For the record, my name is Arnold Torres. I am the National Political Adviser of the League of United Latin American Citizens, this country's oldest and largest Hispanic civil rights organization.

I have the benefit of perspective in this debate. I was here before many of you—or, better yet, the few of you that are here now—in 1981 when Mr. Nelson was nominated. And contrary to what you have heard today from a distinguished Senator in the immigration debate, there was no opposition to Mr. Nelson.

In 1981, what you have heard today and what many of you have discussed today with Mr. McNary, we raised—the issue of fragmentation, the issue of a decentralized agency, very decentralized, and the difficulties. That was almost 9 years ago. Nothing was done.

The issues of processing, losing files, the time problems that Senator DeConcini raised, we raised again in 1981. We did not oppose Mr. Nelson. We raised the issues as they were raised today. Very little has changed 9 years later, and two or three GAO reports and audits. Nothing was done.

During that time, there were a lot of difficulties, and contrary, again, to certain assertions and statements that have been made by members of this committee, there was a great deal of tension between the INS and the Hispanic community.

But it is also correct to say that the issues that were addressed and the major transformation that the INS went through through the legalization program bring the INS at this time to a critical crossroads as to its fundamental mission.

The INS was not known as a service agency prior to the legalization program in 1987. It was regarded, as we indicated in our testimony, as probably the most hated Agency of the Federal Government. However, in 1987, because of legalization, people had to work together, and they did, and there was a tremendous amount of goodwill that was established.

The INS now is at a crossroads. Does it fundamentally go and try to balance itself with enforcement as well as service functions, build on the goodwill that has been established in many communities throughout the country, or does it go back to a law enforcement mode?

What we heard today by the Senators who introduced Mr. McNary was only about his law enforcement background. That was they key. There was very little else discussed in addition to his administration concerns or background, but it was law enforcement—very troubling.

The other things that you have asked him about—and we are very pleased, Senator Simon, that you raised the issue of experience. We would have hoped that you could have taken the issue of experience and applied it to this nomination because it is vitally important.

And the position of Immigration Commissioner is treated as an illegitimate child when it comes to the type of scrutiny and the type of standards that we would apply to other civil rights positions, and that is very unfortunate.

The concerns that we have, and the reason why we must oppose Mr. McNary, are because he doesn't have that experience—that experience that has gone unaddressed in the last five commissioners at the INS.

Second point: the issue of insensitivity. I think Mr. McNary has done well to respond to the questions that were given to him today, but it is still very disheartening to know that a person does not exert creativity, does not attempt to lead and provide direction to the poor people in his area.

St. Louis is not California. Mr. Nelson was from California, and yet Mr. Nelson had a lot of problems dealing with this position. Mr. McNary is from St. Louis. The diversity is not anywhere close to what we have in California. Yet, there were major problems even with Mr. Nelson. We are very concerned that the member of the St. Louis House of Representatives, that congressional district, did not endorse Mr. McNary.

Third point: with regard to his concern and the manner in which he dealt with the defeat of his domed stadium proposal in St. Louis is of special concern to us. The anger that he at least allegedly had, as reported in the newspapers, is very troubling to us because if he gets angry because someone does not agree with him, he is going to be angry most of the time in his position. And we do not want access for access sake; we want access in order to develop joint efforts to address joint problems.

We make a number of recommendations in our testimony because we anticipate he is going to be confirmed; it has pretty much been said as such in this committee today. We hope that Mr. McNary will not only meet with groups, as we have suggested and other groups have suggested, but that he also seriously consider—in fact, we hope that he could commit himself to appointing and creating an advisory committee of immigrant representatives to deal with a number of issues, including the census moratorium, dealing with followup issues and issues that are still out there up in the air with regard to the IRCA law employer sanctions and many other aspects of the IRCA law that are still major difficulties.

We hope that these are the types of things that can be done, and we hope that what this committee will do is request of Mr. McNary that he submit a report to this committee 3 months after he is confirmed explaining to you what his management plan is for the agency. How is he going to address the problems that have been raised today and have been questioned?

We would hope that that would be at least a minimum of what is expected of him, in view of the fact that he is coming in with no experience and that is going to be acceptable to the committee.

[The prepared statement of Mr. Torres follows:]

League of United Latin American Citizens

Jose Garcia De Lara
National President

TESTIMONY

BEFORE

THE

U.S. SENATE JUDICIARY COMMITTEE

REGARDING THE

CONFIRMATION OF MR. GENE McNARY

NOMINEE FOR

COMMISSIONER, IMMIGRATION AND NATURALIZATION

SERVICE (INS)

MR. JOSE GARCIA DE LARA
LULAC NATIONAL PRESIDENT
MR. ARNOLDO S. TORRES
LULAC NATIONAL POLITICAL ADVISOR
OCTOBER 3, 1989

Office of the National President • 342 Wilkens • San Antonio, TX 210 • 512-533-1976
"All for one — one for all"

GOOD DAY, MEMBERS OF THE U.S. SENATE JUDICIARY COMMITTEE. ON BEHALF OF THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC), THIS COUNTRY'S OLDEST AND LARGEST HISPANIC CIVIL RIGHTS AND SERVICE ORGANIZATION, I APPRECIATE THE OPPORTUNITY TO PRESENT OUR TESTIMONY ON THE CONFIRMATION OF MR. GENE McNARY, NOMINEE FOR THE POST OF COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE (INS) OF THE U.S. DEPARTMENT OF JUSTICE.

HAVING READ THE AVAILABLE BACKGROUND MATERIAL ON MR McNARY; HAVING REVIEWED HIS AREAS OF EXPERTISE AND ACCOMPLISHMENTS PRIOR AND DURING HIS TIME AS ST. LOUIS COUNTY EXECUTIVE; HAVING, AS CAREFULLY AND OBJECTIVELY AS POSSIBLE, VISUALIZED THESE EXPERIENCES IN THE CURRENT AND FUTURE IMMIGRATION ARENA, LULAC FEELS COMPELLED TO STATE OUR OPPOSITION TO THE NOMINATION. IT APPEARS THAT THE PEOPLE OF ST. LOUIS FOUND MR McNARY SUITABLE TO MANAGE AND LEAD THEM IN COUNTY AFFAIRS AND WITH THAT ENDORSEMENT AND SUPPORT OF THE PRESIDENT, PERHAPS THERE IS ANOTHER POSITION IN THIS ADMINISTRATION MORE APPROPRIATE FOR MR. McNARY'S SKILLS AND EXPERIENCE. OUR OPPOSITION IS BASED ON THE STANDARDS WE BELIEVE SHOULD HAVE BEEN ESTABLISHED LONG AGO FOR THIS POSITION BUT HAVE BEEN IGNORED. THIS NEGLECT, COUPLED WITH THE GROWING DYNAMICS OF IMMIGRATION AND IT'S BY PRODUCTS, REQUIRES THE NEXT INS COMMISSIONER TO HAVE MUCH GREATER UNDERSTANDING OF AND EXPERIENCE IN IMMIGRATION LAW AND SENSITIVITY TO WORKING WITH A MULTI-CULTURAL CONSTITUENCY. BEFORE WE PROVIDE MORE DETAILS ON OUR REASONS FOR OPPOSITION, WE WOULD LIKE TO PROVIDE AN OVERVIEW OF OUR PERSPECTIVES ON IMMIGRATION ISSUES AS THEY RELATE TO THE COMMISSIONER'S POSITION.

LULAC IS REGARDED BY MANY IN OUR COMMUNITY AS AN ORGANIZATION COMMITTED TO THE CONCEPT OF ASSIMILATION, AND AMERICANIZATION OF HISPANICS, BOTH AMERICAN-BORN AND IMMIGRANTS. WE HAVE BEEN APPLAUDED AS WELL AS CRITICIZED FOR THIS BY MANY INCLUDING HISPANIC ACADEMICS. OUR ORGANIZATIONAL COLORS ARE RED, WHITE AND BLUE, AND WE HAVE SINCE OUR FOUNDING IN 1929, STRESSED THE IMPORTANCE OF LEARNING AND SPEAKING ENGLISH. UP UNTIL 1980, ONE HAD TO BE A U.S. CITIZEN TO JOIN LULAC, LEGAL RESIDENTS WERE NOT ALLOWED TO JOIN. UP UNTIL 1985 IN ORDER TO FORM A LOCAL COUNCIL YOU NEEDED TO HAVE THREE-FOURTHS OF YOUR NUMBERS TO BE U.S. CITIZENS. DESPITE THESE LIMITATIONS ON THE ROLE OF NON-CITIZENED HISPANICS WE HAVE FOUGHT FOR THEIR RIGHTS IN THIS COUNTRY

AS A MATTER OF PRINCIPLE. THIS HISTORY OF LULAC UNDERSCORES ITS FUNDAMENTAL COMMITTMENT TO THE IDEALS OF THIS COUNTRY AND THE CONCEPT OF JUSTICE AND FAIRNESS. WE ARE NOT HERE TO CONDEMN MR. McNARY BASED ON IDEOLOGICAL OR POLITICAL DIFFERENCES; WE ARE NOT HERE TO OPPOSE MR McNARY BECAUSE WE FAVOR AN OPEN BORDER AND UNLIMITED ENTRY OF HISPANICS TO THE U.S.; WE ARE HERE TO OPPOSE MR. McNARY AS A MATTER OF PRINCIPLE AND WHAT WE BELIEVE TO BE IN THE BEST INTEREST OF THIS COUNTRY AND OUR COMMUNITY.

AS LONG AS CAN BE REMEMBERED, THERE HAS ALWAYS BEEN A STRONG ADVERSERIAL ASPECT TO THE RELATIONSHIP BETWEEN THE INS AND HISPANIC COMMUNITY IN GENERAL. THIS HAS INCREASED SINCE THE 1970's AND ESCALATED EVEN MORE DURING THE 80's. REASONS FOR THIS ESCALATION CAN BE TRACED TO THE CONSTANT ECONOMIC AND POLITICAL INSTABILITY OF LATIN AMERICA WHICH HAS RESULTED IN SIGNIFICANT IMMIGRATION PRESSURES TO THE U.S., THE CONSTANT APPETITE OF THE U.S. PRIVATE SECTOR FOR CHEAP AND AVAILABLE UNDOCUMENTED WORKERS WHICH HAS PROVIDED A MAGNET EFFECT, AND THE HISTORICAL AND TRADITIONAL TRENDS AND BEHAVIOR PATTERNS BETWEEN THE U.S. AND THE MANY COUNTRIES SOUTH OF OUR BORDER. ACCOMPANYING THESE FACTORS HAS BEEN A GROWING INTOLERANCE FOR IMMIGRATION FROM ANY PART OF THE WORLD BUT ESPECIALLY FROM LATIN AMERICA.

WE HAVE READ, WATCHED AND HEARD U.S. SOCIETY BLAME THE EARLY 1980's ECONOMIC WOES ON THE UNDOCUMENTED WORKER POPULATION. MANY MAJOR MEDIA AND SOCIO-POLITICAL LEADERS CONTENDED THAT IF IT WERE NOT FOR THE UNDOCUMENTED, AMERICAS' RECORD UNEMPLOYMENT RATES OF THE EARLY 80's WOULD NOT HAVE EXISTED.

WHILE THE UNDOCUMENTED WORKER/HISPANIC IMMIGRANT WAS BEING GIVEN MIXED MESSAGES, ONE BY THE PRIVATE SECTOR, THE OTHER BY THE MEDIA, POLITICAL LEADERS AND A GROWING SENTIMENT FROM THE GENERAL POPULACE OF "WE DON'T WANT YOU ANYMORE," THERE WAS AN ANTI-IMMIGRANT MOVEMENT DEVELOPING AROUND THE "ENGLISH-ONLY" THEME OF THE EARLY 1900's.

THROUGHOUT THE VOLATILE DYNAMICS, THE INS WAS COMING UNDER MAJOR SCRUTINY OF THE TYPE IT HAD NOT EXPERIENCED BEFORE. THERE WERE CHARGES OF MIS-MANAGEMENT, (A COMMON CRITICISM OF THE AGENCY) UNPROFESSIONALISM, UNDERSTAFFING, AND INCOMPETENCE. CLEARLY, INS WAS AFFLICTED WITH

FRUSTRATION, EXASPERATION AND LOW MORALE FOR DESPITE THEIR EFFORTS THEY NOT ONLY WERE NOT HAVING ANY IMPACT ON IMMIGRATION TO THE U.S., BUT THEY WERE BEING ROUNDLY CRITICIZED FOR THEIR "INEFFECTIVENESS." A CHARGE THEY FELT WAS TOTALLY UNWARRANTED IF PEOPLE WOULD ONLY CONSIDER THE MASSIVE RESPONSIBILITY OF PATROLLING THE U.S. BORDERS WITH LIMITED RESOURCES AND NO POLICY SUPPORT.

IT IS HERE THAT WE FIND THAT TENSIONS BETWEEN THE INS AND HISPANIC COMMUNITY BEGAN TO WORSEN AND THAT WE BEGAN TO SEE VOLATILE SITUATIONS AND TRENDS DEVELOPING THROUGHOUT IMMIGRANT COMMUNITIES AND ALONG THE U.S.-MEXICO BORDER. SPECIFICALLY, THE INS WAS VIEWED AS ONLY CONDUCTING ITS ENFORCEMENT RESPONSIBILITIES WHILE ITS FUNCTIONS OF PROCESSING APPLICATIONS FOR ADMITTANCE AND STATUS ADJUSTMENTS LANGUISHED. SEVERAL REPORTS IN NEWSPAPERS AND BY THE GENERAL ACCOUNTING OFFICE (GAO) POINTED OUT THE DELAYS, THE LOSING OF FILES, MISMANAGEMENT AND GENERAL DISORGANIZATION WHICH EXISTED IN MANY FIELD OFFICES OF THE INS. ON THE ENFORCEMENT FRONT, THE INS WAS FOUND TO BE OPERATING AROUND SCHOOL YARDS OF MANY CITIES IN THE SOUTHWEST ASKING HISPANIC CHILDREN THEIR STATUS, AND WAITING TO QUESTION THE PARENTS ABOUT THEIR STATUS AS THEY CAME TO GET THEIR CHILDREN. NEWSPAPER ARTICLES ABOUND WITH REPORTS AS TO HOW INS AGENTS HAD RAIDED A WORKSITE, SPORTS EVENT, OR SOCIAL GATHERING TO PICK-UP UNDOCUMENTED WORKERS, AND HAD CREATED MAJOR TENSIONS AND CONFRONTATIONS WITH OUR COMMUNITY IN GENERAL. OFTENTIMES WE READ OF HOW LEGAL RESIDENTS AND U.S. CITIZENS OF HISPANIC DESCENT HAD BEEN HARASSED, QUESTIONED AND IN SEVERAL CASES ARRESTED SIMPLY BECAUSE OF OUR FACIAL AND LINGUISTIC CHARACTERISTICS - WE WERE THOUGHT TO BE UNDOCUMENTED. WE SAW A GREAT DEAL OF MORE ACTIVITY BY THE BORDER PATROL AND AGAIN AN ESCALATION OF VIOLENCE OF TEN TIMES BEING COMMITTED AGAINST THE UNDOCUMENTED MALE, FEMALE AND CHILD. AGAIN, WE READ OF THESE INCIDENTS IN THE NEWSPAPERS AND HEARD OF THEM THROUGH THE IMMIGRANT COMMUNITY NETWORK. WHAT WE HAVE DESCRIBED IS NOT EXAGGERATION, NOR HYPERBOLE; IT IS NOT AN ATTEMPT TO WRAP THIS ISSUE UP IN THE SHROUD OF RACISM; IT IS FACTUAL, IT IS OUR REALITY, IT IS WHAT MANY IN OUR COMMUNITY SAW AND CAME TO UNDERSTAND. IT IS NO SURPRISE THAT FROM 1970 TO 1987 THE INS WAS THE MOST HATED AGENCY IN ALL OF GOVERNMENT IN MANY HISPANIC HOMES THROUGHOUT THIS COUNTRY.

IN 1987 WHEN THE LEGALIZATION PROVISIONS OF THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 WERE TO BEGIN, THERE WAS MUCH PESSIMISM AND SKEPTICISM ABOUT WHETHER THE INS COULD ALTER IT'S TERRIBLE IMAGE AND ATTITUDE TO PROVIDE A SERVICE. THAT SERVICE WAS TO BE ENCOURAGING, INFORMING, ASSISTING AND PROCESSING APPLICATIONS FOR LEGALIZATION BY QUALIFIED UNDOCUMENTED WORKERS. WHILE MANY FACETS OF IT'S NEGATIVE IMAGE REMAINED AND IN FACT HAVE INCREASED IN SOME CASES DUE TO ITS APPROACH AND ENFORCEMENT OF EMPLOYER SANCTIONS AND IT'S PROPOSAL TO BUILD A DITCH AND POSSIBLY OTHER PHYSICAL BARRIERS ALONG THE U.S. - MEXICO BORDER, THE INS DEVELOPED A NEW FACET TO ITS IMAGE. ONE OF WORKING AND ASSISTING IMMIGRANTS TO GAIN LEGAL STATUS. THIS PROGRAM FORCED THE INS, HISPANIC AND OTHER IMMIGRANT COMMUNITIES TO DIALOGUE, AND COMMUNICATE WITH ONE ANOTHER. IN MANY CASES THEY WORKED CLOSELY TOGETHER TO ACCOMPLISH THE OBJECTIVE OF LEGALIZING AS MANY QUALIFIED UNDOCUMENTED WORKERS AS POSSIBLE. AGAIN, WHILE MUCH OF THE NEGATIVES OF THE INS CONTINUED, EVEN WITH THE LEGALIZATION PROGRAM, IT CANNOT BE DENIED THAT WE HAD SEEN A TRANSFORMATION OF THE INS.

THE RECOGNITION OF THIS TRANSFORMATION IS ABSOLUTELY VITAL FOR THIS COMMITTEE TO TRULY UNDERSTAND. DESPITE THE BOLD AND BRUTE-MANNER OF FORMER COMMISSIONER NELSON'S PRONOUNCEMENTS ABOUT SALVADOREAN REFUGEES AND THEIR INCARCERATION AND DEPORTATION, DESPITE HIS "UGLY-AMERICAN" ATTITUDE TOWARD MEXICO AND ITS VIEWS AND CONCERNS ABOUT IMMIGRATION, THE INS STILL HAD MADE FRIENDS OF UNDOCUMENTED WORKERS AND ESTABLISHED COMMUNICATION AND WORKING RELATIONSHIPS WITH MANY WHO HAD ATTACKED IT, DUE TO THE LEGALIZATION PROGRAM. THIS HAD NEVER BEEN DONE BEFORE. SO I SUBMIT TO YOU THAT THE INS IS AT A FUNDAMENTAL CROSSROADS IN ITS MISSION AND RELATIONSHIP WITH IMMIGRANT COMMUNITIES. DOES IT BUILD ON THE GOOD WILL IT HAS ESTABLISHED AS A RESULT OF LEGALIZATION, OR DOES IT RETURN TO A STRICTLY ENFORCEMENT MODE NOW THAT LEGALIZATION IS WINDING DOWN? IT IS KEY THAT THIS COMMITTEE REMEMBER THAT THE IMMIGRANT COMMUNITY WILL CONTINUE TO GROW - BOTH LEGAL AND UNDOCUMENTED, REGARDLESS OF IRCA. AS THIS GROWTH OCCURS SO TOO WILL THE CRY FOR STOPPING IT. THESE FORCES WILL COLLIDE MORE AND MORE. WE WILL SEE AN INCREASE IN VIOLENT AND DEATH-RESULTING CONFRONTATIONS AS WE HAVE HAD IN THE LAST TWO TO THREE MONTHS ALONG THE SAN DIEGO-MEXICO BORDER AND IN FRESNO WHERE AN INS AGENT WAS INVOLVED. WE WILL HAVE MORE CONFRONTATIONS OF THE TYPE WE HAD LAST MONTH IN SAN DIEGO IN WHICH A BORDER PATROL AGENT WAS REPORTED TO BE HOLLERING OBSCENITIES AND CULTURAL INSULTS AT MEXICANS

ACROSS THE OBRDER. THIS IS THE HARD, COLD REALITY WHICH EXISTS IN THIS COUNTRY TODAY AROUND IMMIGRATION. YES, THERE IS A VERY POSITIVE SIDE TO THIS ISSUE WHICH REVOLVED AROUND THE LEGALIZATION PROGRAM AND THE OVER 1.5 MILLION PERSONS WHO HAVE QUALIFIED TO ADJUST THEIR STATUS IN THIS GREAT COUNTRY. HOWEVER, IT IS THE FORMER ISSUES WHICH THE NEW COMMISSIONER MUST ANSWER AND COME TO TERMS WITH. HE MUST UNDERSTAND THE CROSSROADS THE INS STANDS AT TODAY AND PRUDENTLY DECIDE WHERE IT GOES TOMORROW. HE MUST SEE THE IMPORTANCE OF PURSUING UNDERSTANDING AND MUST DEAL WITH THE FEAR, APPREHENSION, AND ANTAGONISM WHICH EXIST BETWEEN OUR AND OTHER IMMIGRANT COMMUNITIES AND THE INS. THE NEW COMMISSIONER MUST GO ABOUT THIS PROCESS WITHOUT ALLOWING OTHERS TO SUBSTITUTE THEIR INTERPRETATIONS AND TRANSLATIONS OF THE REALITY. HE MUST BE WILLING TO LEARN FIRST HAND AND NOT VICARIOUSLY. THESE ARE SOME OF THE ATTITUDES AND BACKGROUND WE BELIEVE ARE ABSOLUTELY IMPERATIVE FOR THE NEW COMMISSIONER TO POSSESS. THE PERSON OCCUPYING THIS POSITION MUST HAVE SOME PRACTICAL EXPERIENCE DEALING WITH IMMIGRATION LAW. THEY MUST BE DISPOSED TO DEVELOPING WAYS OF COMMUNICATING WITH A MULTI-CULTURAL CONSTITUENCY, AND HAVE DEMONSTRATED STRONG MANAGEMENT SKILLS IN PREVIOUS POSITIONS.

WHEN WE APPLY THESE STANDARDS TO MR. McNARY WE FIND LITTLE CORRELATION WITH HIS BACKGROUND AND EXPERIENCES. WE FIND VERY TROUBLING THAT HE HAS BEEN ALLEGED TO HAVE WORKED QUITE DILIGENTLY TO STAVE OFF EFFORTS TO DEVELOP LOW INCOME HOUSING PROJECTS IN HIS COUNTY AND HAS NOT DEMONSTRATED MUCH LEADERSHIP AND/OR SENSITIVITY IN DEALING WITH THE PROBLEMS OF MINORITIES AS EVIDENCED BY HIS STAGNANT BUDGETS. WE FIND VERY TROUBLING ASSERTIONS THAT AFTER THE DEFEAT OF HIS DENIED STADIUM PLAN HE RETREATED AND BECAME BITTER.

IT IS FOR THE ABOVE REASONS THAT WE FEEL COMPELLED TO OPPOSE THE NOMINATION OF MR. GENE McNARY TO SERVE AS THE COMMISSIONER OF THE INS. THE STANDARDS/ QUALIFICATIONS FOR THE INS COMMISSIONER HAVE NEVER BEEN ESTABLISHED BY ANY ADMINISTRATION. IN FACT, MANY HAVE JOKED THAT IF EXPERIENCE IN IMMIGRATION WAS A CRITERIA TO QUALIFY FOR THIS POSITION WE WOULD NOT HAVE APPOINTED THE LAST FIVE COMMISSIONERS. IT IS PRECISELY THIS CAVALIER ATTITUDE WHICH IS PARTLY TO BLAME FOR MANY OF THE ISSUES WE HAVE DISCUSSED. WE HAVE NOT TAKEN THE JOB OF COMMISSIONER OF THE INS SERIOUS ENOUGH TO ESTABLISH SUBSTANTIVE STANDARDS FOR QUALIFYING TO SERVE. WE HAVE TREATED THE POSITION SIMPLY AS A POLITICAL SPOIL TO REWARD PARTISAN SUPPORTERS.

THIS COUNTRY DESERVES AND NEEDS BETTER. IT CANNOT APPOINT YET ANOTHER PERSON WITH NO PRACTICAL EXPERIENCE AND UNDERSTANDING OF THE GROWING IMMIGRATION DYNAMICS.

WE BELIEVE MR. McNARY IS QUALIFIED TO SERVE IN THIS ADMINISTRATION, BUT IN A ROLE WHICH IS MORE IN LINE WITH HIS BACKGROUND AND EXPERIENCE. IT IS OUR HOPE THAT THIS CAN BE ACCOMPLISHED. HOWEVER, SHOULD HE BE CONFIRMED WE WOULD STRONGLY URGE THAT:

1) THE SENATE JUDICIARY COMMITTEE FACILITATE A MEETING BETWEEN MR. McNARY AND HISPANIC AND OTHER ETHNIC/IMMIGRANT ORGANIZATIONAL REPRESENTATIVES. THIS MEETING SHOULD TAKE PLACE WITHIN TWO WEEKS OF HIS BEING ON THE JOB.

2) AN ADVISORY COMMITTEE ON IMMIGRANT CONCERNS BE FORMED TO HAVE AN ON-GOING INSTITUTIONALIZED MECHANISM TO DIALOGUE WITH THE COMMISSIONER AND INS. THIS ADVISORY COMMITTEE WOULD EXAMINE AMONG OTHER ISSUES:

    A) THE ROLE AND IMPACT OF THE INS DURING THE 1990 CENSUS. THE CONCERN HERE IS THAT AN AGRESSIVE ENFORCEMENT MODE WOULD HAVE A NEGATIVE IMPACT ON THE COUNT OF HISPANICS, ESPECIALLY NEWLY LEGALIZED PERSONS;

    B) UNSETTLED ISSUES AND FOLLOW-THROUGH ON THE FINAL PHASE OF THE LEGALIZATION PROGRAM;

    C) EXPLORE AND DEVELOP JOINT OUTREACH INITIATIVES DESIGNED TO IMPROVE COMMUNICATIONS BETWEEN THE INS AND ETHNIC/IMMIGRANT COMMUNITIES; AND

    D) EXPLORE AND DEVELOP JOINT INITIATIVES DESIGNED TO IMPROVE THE ADJUSTMENT TO CITIZENSHIP BY LEGAL RESIDENTS. THIS HAS AND CONTINUES TO BE A MAJOR PROBLEM AND SEEMINGLY A CONTRADICTION IN THE MISSION OF THE INS. AGAIN, THE INS IS VIEWED BY MANY AS MAKING AT BEST A HALF-HEARTED EFFORT TO ENCOURAGE AND ASSIST LEGAL RESIDENTS TO ADJUST THEIR STATUS TO CITIZENSHIP.

League of United Latin American Citizens

Jose Garcia De Lara
National President

September 18, 1989

The Honorable Edward Kennedy
Chairman
U.S. Senate Sub-Committee on Immigration
Dirksen Senate Office Building
Washington, D.C. 20515

Dear Senator Kennedy:

On behalf of the league of United Latin American Citizens (LULAC), this country's oldest and largest Hispanic civil rights and service organization. I am writing as a follow-up to our letter to the Senate Judiciary Committee in which we requested the opportunity to testify at the confirmation hearings of Mr. Gene McNary, nominee to serve as the Commissioner of the Immigration and Naturalization Service (INS). We would like to suggest that your office facilitate a meeting between those organizations who have requested to testify, and Mr. McNary. We believe such a meeting is necessary prior to a hearing in order to better understand Mr. McNary's qualifications and perspectives regarding the position at INS. In view of some of the controversial comments and actions Mr. McNary has been associated with, we believe such a meeting could serve to clarify these issues.

We would appreciate knowing your position on this request as soon as possible, for we understand his confirmation hearings begin soon.

Respectfully Submitted,

Jose Garcia De Lara

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"All for one — one for all."

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Senator SIMON [presiding]. Thank you.

Mr. Moreno.

STATEMENT OF MARIO MORENO, REGIONAL COUNSEL, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

Mr. MORENO. Thank you, Senator Simon, and I would like to thank the committee for giving the Mexican American Legal Defense and Educational Fund the opportunity to come here and to express our thoughts on the appointment of Gene McNary to be the next Commissioner of the Immigration and Naturalization Service. I am Mario Moreno. I am regional counsel of the Mexican American Legal Defense Fund here in Washington.

The position of Commissioner of the INS is an extremely important position to the Hispanic community. We believe that the position requires a tough administrator, but also someone with strong immigration experience, as was mentioned by both of my colleagues in their comments preceding me.

Though Mr. McNary possesses formidable administrative experience, his record is devoid of practical immigration experience. Troubled as the Agency is with managerial inefficiency, the position of INS Commissioner is much more than just an administrative job. Substantive knowledge of the field to be administered is an essential skill, we feel, and never more so than in this complex area of immigration law and policy.

Notwithstanding the concerns that we have about Mr. McNary, MALDEF is not here to speak in opposition or in favor of Mr. McNary's nomination. Our purpose, rather, is to help frame the current status of relations between the Hispanic community and the INS, and to identify those problems that stand in the way of improving that relationship.

It is no secret that, at best, the relations between Hispanic organizations and the INS have, in the past, been strained. For this reason, accessibility to the INS Commissioner is of extreme importance to MALDEF.

It is vital that we develop a dialog to keep the channels of communication open. To this end, we feel that the new INS Commissioner should carefully consider the establishment of an advisory commission to personally confer with him on immigration issues that impact the immigrant community.

If such an advisory commission is to have any impact, the new Commissioner should meet with it regularly and take its recommendations seriously. We request the assistance of this committee in terms of trying to convince Mr. McNary that that is something that should be established.

This brings me to, I think, an important section of my testimony that deals with the reforms of the INS disciplinary procedures within the Service. The Hispanic community is acutely aware of the fact that in the course of conducting its enforcement activities, whether they be at the border or within the country's interior, the INS routinely creates a climate of fear and intimidation, uses excessive force, physically and verbally abusing citizens and aliens alike, and consistently displays improper racial animus in targeting persons based merely on the fact that they appear Hispanic.

It is particularly disturbing that agents commit these acts of misconduct without any risk of being disciplined and with the tacit authorization and acquiescence of their supervisors.

MALDEF believes that one of the paramount priorities of the new Commissioner should be to establish an effective internal complaint and disciplinary procedure. Accordingly, believing as we do that it is not in the national interest to perpetuate an adversarial relationship between the agency and the Hispanic community, we set forth recommendations which, in our view, must be implemented to ensure that unconstitutional and/or abusive conduct on the part of the Agency is swiftly redressed.

This committee should insist that the new Commissioner take immediate steps to devise an effective complaint and disciplinary process to preclude the continuation of incidents of the type that I mention in my full written testimony to the committee.

Many in the Hispanic community, justifiably so, perceive the INS as a renegade agency that has for years been able to operate outside the law with impunity. MALDEF's recommendations are listed in our written testimony in full.

On another issue, naturalization should get more attention within the Service. All agree that the immigration systems of this country should encourage immigrants to become U.S. citizens. However, people disagree in terms of how this should be accomplished.

The INS, which is solely responsible for promoting and encouraging citizenship, uses naturalization as voluntary and does not actively inform residents as they become eligible for citizenship. MALDEF recommends that the new INS Commissioner review its current role in naturalization, with a view of taking a more proactive posture with regard to encouraging naturalization. To achieve this, we suggest that a citizenship bureau be established within the bureau, separate and apart from the enforcement activities of the Service. Under its own budget, the bureau should develop a comprehensive outreach program that encourages rather than discourages applicants for citizenship.

The final concern that we have is with regard to the implementation of IRCA and the role that INS takes in that regard. Many of the activities that the INS—many of the policies, many of the regulations and procedures have a tendency, we have found, to encourage and to promote discrimination. We have listed many of the concerns in our testimony and we, you know, call your attention to that.

In conclusion——

Since its inception, the INS has had a rather schizophrenic mandate. On the one hand, INS enforcement detains, deports and excludes. On the other hand, it is charged with integrating immigrants into the American mainstream through naturalization.

The success of the nominee will be measured on how well he can balance the conflicting mandates. We look to the new INS Commissioner for strong leadership in fostering a new era of improved relations with our community, and it is hoped that the new Commissioner will not only be accessible to us, but also be responsive to the concerns that we have outlined in our testimony.

Thank you.

[The prepared statement of Mr. Moreno follows:]

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MALDEF

TESTIMONY

ON THE
NOMINATION OF

EUGENE McNARY

TO BE
COMMISSIONER OF
THE IMMIGRATION & NATURALIZATION SERVICE

BEFORE

THE SENATE JUDICIARY COMMITTEE

OCTOBER 3, 1989

SUBMITTED BY

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Mr. Chairman and members of the Judiciary Committee, thank you for providing the Mexican American Legal Defense and Educational Fund (MALDEF) with the opportunity to testify concerning the appointment of Eugene McNary to be the next Commissioner of the Immigration and Naturalization Service -(INS).

I am Mario Moreno, Regional Counsel for the Washington, D.C. office of MALDEF. MALDEF is a national non-profit organization dedicated to the protection and advancement of the civil and constitutional rights of Hispanics in the United States. MALDEF's national headquarters are in Los Angeles, and we have regional offices in San Francisco, San Antonio, Chicago, and here in Washington, D.C.

The immigration laws of this nation have changed substantially since the McCarran-Walter Act of 1952 first codified the immigration laws under a single statue. In 1986, President Reagan signed into law the Immigration Reform and Control Act (IRCA), a far-reaching piece of legislation to address undocumented immigration into the United States. Earlier this year the Senate passed S.358 initiating a serious effort to forge comprehensive reform of the nation's current legal immigration system. On the question of refugee issues both Houses of Congress have struggled to maintain this nation's commitment to the Soviet Jewry, Indochinese, Eastern European, and African refugees. Without question the immigration issues that face this nation, and that will undoubtedly confront the new INS Commissioner are both complex and controversial, requiring strong administrative skills and considerable immigration experience to deal with effectively.

The position of INS Commissioner, to which Mr. McNary has been nominated, is extremely important to the Hispanic community. Though the nominee possessing formidable administrative skills, his record is devoid of any practical immigration experience. Troubled as the agency is with managerial inefficiency, the position of INS Commissioner is more than an administrative job. It is much, much more. It stands to reason that you do not recruit a high school principal, or a college dean to run the Securities and Exchange Commission just because he or she has good administrative skills. Substantive knowledge of the field to be administered is an essential skill, and never more so than in the complex area of immigration law and policy.

While the new Commissioner will undoubtedly require extraordinary administrative experience to effectively deal with the INS' managerial woes, the nominee nonetheless must also demonstrate a capacity for sensitivity and compassion. MALDEF is particularly troubled, as are members of this Committee, by reported accounts of Mr. McNary's insensitivity to minority concerns while in his previous capacity as County Executive of St. Louis County, Missouri.

Notwithstanding these concerns, MALDEF is not here to speak in opposition, or in favor of Mr. McNary's nomination. Our purpose rather is to help frame the current status of relations between the Hispanic community and the INS, and to identify those problems that stand in the way of improving that relationship.

With your indulgence, Mr. Chairman, allow me now to briefly discuss some of the more important issues that the new Commissioner will face immediately upon confirmation.

THE NEW INS COMMISSIONER MUST BE ACCESSIBLE

It is no secret that, at best, relations between Hispanic organizations and the INS have in the past been strained. It seems unlikely that Mr. McNary will be adept at smoothing over these tensions since his record is strikingly barren of any interaction, exposure, or experience with immigrant communities or immigration issues. For this reason our accessibility to the new Commissioner is of pivotal concern in the context of this confirmation hearing.

Because of the importance of immigration to our community, it is vital that we develop a dialogue and keep channels of communication open with the new INS Commissioner. To this end, the new Commissioner should carefully consider the establishment of an Advisory Commission to personally confer with him/her on immigration issues effecting our community. There is precedence for such an advisory group; most recently one was established in connection with the implementation of IRCA's legalization provision. If such an Advisory Commission is to have any impact, the new Commissioner must meet with it regularly and take its recommendations seriously. We respectfully request that this

Committee encourage Mr. McNary should he be confirmed, to continue the INS's policy of direct communication with immigrant's rights groups and to establish such an Advisory Commission.

THE NEED TO REFORM INS DISCIPLINARY PROCEDURES

The Hispanic community is acutely aware of the fact that in the course of conducting its enforcement activities--whether at the border or in raids within the country's interior--INS routinely creates a climate of fear and intimidation, uses excessive force, physically and verbally abuses citizens and aliens alike, and consistently displays improper racial animus in targeting persons on the basis of Hispanic appearance. It is particularly disturbing that, as described below, agents commit these acts of misconduct without risk of being disciplined and with the tacit authorization and acquiescence of supervisors. MALDEF believes that one of the paramount priorities of the new commissioner should be the establishment of effective internal complaint and disciplinary procedures. Accordingly, believing as we do that it is not in the national interest to perpetuate an adversarial relationship between the agency and the Hispanic community, we set out recommendations which, in our view, must be implemented to ensure that unconstitutional and/or abusive misconduct on the part of agents is swiftly redressed.

In January of this year, MALDEF attorneys initiated a four month trial of a class action challenging unlawful INS conduct in the course of conducting work place raids. Following the testimony of nearly one hundred witnesses, the federal district court in Northern California issued a decision on June 12, 1989, finding in favor of the plaintiffs.[1]

MALDEF attorneys presented evidence and the court found a persistent pattern of unnecessary and excessive verbal and physical abuse inflicted on persons who were neither resisting arrest nor posing any threat to the safety of agents. For example, Mr. Estrada, a worker at a mushroom farm, requested to call an attorney while being interrogated on an INS bus. Thereafter, agents immediately forcibly removed him from the bus, twisted his arms behind his back, handcuffed him, grabbed him by the hair and slammed his head repeatedly against an INS car. In another raid, a plant supervisor, Mr. Mendes, a U.S. citizen complained of the agents' use of the term "wetbacks." He was pushed from the loading dock by an agent who proceeded to put his foot on Mr. Mendes' head, handcuff him, and transport him to headquarters for allegedly interfering with a federal officer. The record in this case is replete with examples of egregious misconduct: numerous Hispanic workers were handcuffed so tightly that their wrists bled; an Hispanic worker was shoved to the ground by an agent who placed his foot on the back of the man's head, forcing his face into a puddle of waste water in a fish processing plant; another worker, without provocation, had his head slammed against a work table; another Hispanic who refused to sign a voluntary departure form was threatened with being locked up in a dark room for three days; and, in at least six raids, there was unnecessary threatening use of weapons. Without detailing every example presented at trial, we note that the court found a persistent pattern of force and intimidation. To date, no agent has ever been investigated, much less disciplined, for engaging in the misconduct set out described above.

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[1] Pearl Mushroom Farms v. Nelson, No. C 82-1896-RPA "Order for Publication Denying 41(b) Motion," filed June 12, 1989 and amended August 24, 1989.

MALDEF attorneys further presented evidence of a pervasive pattern of verbal assaults, frequently with racial overtones, that were inflicted on Hispanic employees. The evidence showed, and the court agreed, that agents consistently refer to Hispanics as "wets," "wetbacks," "greasers," and "Fucking Mexicans." Not surprisingly, the record showed that an individual's detention is substantially motivated by racial factors and impermissible stereotypes. There were numerous examples at trial of agents singling out Hispanic workers while others, particularly Anglos, were left alone.

Moreover, this conduct was not limited to the agents in the field. During the course of his deposition, former Regional Commissioner, Harold Ezell, candidly conceded that employees routinely use the term "wet," but that he does not believe such incidents are "worthy of a report to OPR (Office of Professional Responsibility)." Another supervisor, Francis Senko, the now deceased former director of the Sàn Jose INS office, was apparently so accustomed to using the term "wet" that he used the term out of force of habit during the course of his deposition. Robert Moschorak, the former Assoc. Regional Commissioner, testified that he, like his boss Mr. Ezell, has personally used the terms "wetbacks," "Mojados," and "tonks." An agent, Larry Moy, when asked to define the derivation of the term "tonk," replied: "...it's the sound of flashlight hitting somebody's head, tonk."

What is most alarming about all this is that--as confirmed by the testimony of San Francisco District Director and Samuel Blake, the former supervisor of the district's enforcement unit--no agent has ever been disciplined for using these concededly racist terms. Moreover, as noted, agents frequently act upon this hostility and racial prejudice against Hispanics with violent and brutal conduct.

By focusing on MALDEF litigation in Northern California, we do not mean to imply that his type of misconduct is limited to this area of the country. Indeed, our offices receive numerous reports that, as frequently reported in the press, abuses are even more rampant along the border. Just last month, the Brownsville Herald (August 31, 1989) reported that a detention officer pleaded guilty to sexually molesting two 16-year-old undocumented immigrants detained at Port Isabel. The Valley Star notwithstanding a judge's release order, an immigrant was "dragged from the courtroom," hidden from his attorneys, and "shanghaied" out of the country, i.e., deported to Guatemala.

Finally, the Network News (Newsletter of National Network for Immigrant Rights, Vol. II, No. 5, July 1989) reports that "...in late December, 1988, two undocumented immigrants were shot in the back while handcuffed by the Border Crime Prevention Unit (a specialized task force of San Diego police and Border Patrol agents). Since 1984 this unit has shot over 44 undocumented Mexican citizens, killing 18."

Having been made aware of this pervasive pattern of abuses by agents in the field, Congress should insist that the new Commissioner take immediate steps to devise an effective complaint and disciplinary process to preclude the continuation of these incidents. Many in the Hispanic community, justifiably so, perceive INS as a renegade agency that has for years been able to operate outside the law with impunity. MALDEF recommends the following:

1. That the agency emphasize intensive officer training, including the training of supervisors who must be apprised in no uncertain terms that misconduct is not to be tolerated;

2. That INS critically assess its current Office of Professional Responsibility and make public the disposition of all pending complaints;

3. That an independent oversight program be established in each INS district, composed of INS personnel and a civilian advisory committee.

4. That each such body be independent of the region and report directly to a central, national office under the direct jurisdiction of the INS commissioner.

5. That a sufficient number of experienced investigators be

assigned to each district;

6. That INS engage in an extensive public educational campaign to make the public aware of the procedures for filing complaints; and

7. That complaint statistics, including case resolutions, be compiled and disseminated on a periodic basis.

NATURALIZATION MUST RECEIVE MORE ATTENTION

All agree that the immigration system in this country should encourage legal immigrants to become U.S. citizens. However, people disagree on how this should be accomplished. The INS, which is solely responsible for promoting and encouraging citizenship, views naturalization as voluntary and does not actively inform residents when they become eligible for citizenship. The emphasis has traditionally been on the enforcement and deportation side of the ledger, with only minimal attention given to the naturalization function. MALDEF recommends that new INS Commissioner review and investigate the current INS role in naturalization with a view on taking a more proactive posture to encourage naturalization.

To achieve this, MALDEF suggests that the new Commissioner consider recommending the establishment of a citizenship bureau within the INS. To be most effective the citizenship bureau should be segregated from INS enforcement activities. Under its own budget the bureau should develop a comprehensive outreach program that encourages, rather than discourages applications for citizenship. We are confident that legal immigrants will respond positively to a citizenship bureau, especially those from Mexico who have the lowest naturalization rates of any other ethnic group.

INS ENFORCEMENT MORATORIUM DURING 1990 CENSUS COUNT

MALDEF has devoted substantial staff time and resources to the census since the early 1970's because of its importance to Hispanics and the nation. We recognize that our ability to improve life opportunities for Hispanics, to protect Hispanic voting rights, and to obtain full representation for Hispanics is dependant upon a complete and accurate census account. We also recognize that one of the greatest impediments to a complete count is fear of the INS.

As long as there has been a census there has been an undercount. The Census Bureau estimates that it missed about 1% of the total United States population in 1980. Unfortunately Hispanics make up a disproportionate number of those who go uncounted. The number of persons not counted, the "undercount", is greater for "hard to count" groups, including Blacks and Hispanics.[2] For example, the 1985 mid-decennial census in Los

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[2] See 1990 Census Adjustment Procedures and Coverage Evaluation: Before the Subcomm. on Census and Population of the House Comm. on Post Office and Civil Service, 99th Cong., 2d Session 7, 8 (1986) (statement of Barbara A. Bailer, Assoc. Director for Statistical Standards and Methodology, Census Bureau); Census Under-count and the Feasibility of Adjusting Census Figures: Hearing before Subcomm. on Census and Population of the House Comm. on Post Office and Civil Service. 100th Cong., 1st Session 80, 91 (1987) (article submitted, E. Erickson, J.B. Kadane and J.W.

Angeles County indicated a Hispanic undercount of 9.8 percent.[3] Because the enumeration process will be substantively the same in 1990 as it was in 1980, it is apparent that the Hispanic community, along with other hard-to-count communities, is at serious risk of being undercounted in 1990.[4]

The new INS Commissioner must understand that perhaps the greatest barrier to a complete count is distrust of the government. MALDEF has long recognized that the Hispanic community harbors a distinct fear and distrust of the INS and its enforcement techniques. This fear results in a distrust of any governmental agency, since many in the Hispanic community do not distinguish between Federal agencies. In 1980, MALDEF worked to obtain a moratorium of INS enforcement of immigration laws while the census was conducted. Despite reported violations of the moratorium, the moratorium helped allay some of the distrust many held about the

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Turkey, Technical Report No. 401, Adjusting the 1990 Census of Housing and Population (1987)).

[3] G. Diffendal, The 1986 Test of Adjustment in Central Los Angeles Count, Census Bureau Undercount Research Staff, Statistical Research Division, at 4.

[4] The unwillingness to participate in the Census is not limited to undocumented aliens. The impact of IRCA enforcement on the undocumented alien population has a spill-over effect into the greater Hispanic community in a number of ways. First, not all families are entirely undocumented or legal residents (whether citizens or permanent resident aliens). There are many families with mixed immigration status (e.g., undocumented parents with citizen children, one undocumented parent living with documented parent and children, or children with mixed immigration status, an undocumented child with citizen siblings). Thus, if an undocumented parent fails to take part in the census, citizen and other documented family members may not be counted either.)

census.

In 1990, the distrust and fear of the INS and other federal agencies will be particularly acute because of the changes wrought under the Immigration Reform Act of 1986 (IRCA).[5] As a result of IRCA, employers must ask for immigration documentation from its employees or risk substantial penalties. Many employers use IRCA as an excuse to treat Hispanic employees or applicants in a discriminatory manner-thereby perpetuating fear and distrust. Likewise, INS employer enforcement sanctions and often abusive workplace raids exacerbate distrust of anything related to the government. A moratorium on INS enforcement activities during the 1990 census, and forceful assurances from the Justice Department that no enforcement agencies will seek confidential information, are vital to convince many that the census is indeed safe.

It is for all these reasons that we call upon Mr. McNary, if confirmed, to initiate such a moratorium for the period coinciding with the taking of the 1990 decennial census.

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[5] See IRCA, Pub. L. 99-603, Title I, Part A,(101(a)(1) 100 Stat. 3360 (1986), codified at 8 U.S.C. (1324a (civil penalties for hiring undocumented workers).

IRCA RELATED EMPLOYMENT DISCRIMINATION:
HOW INS ADMINISTRATIVE DIFFICULTIES HAVE COMPOUNDED THE PROBLEM:

The Immigration Reform and Control Act of 1986 (IRCA) changed more than our immigration laws; it created dramatic changes in the rights and responsibilities of both employers and employees in the United States. It has resulted in a precipitous increase in cases of employment discrimination on the basis of national origin and citizenship.

MALDEF has monitored the implementation of IRCA since its passage in the fall of 1986 and has assisted hundreds of persons who have suffered employment discrimination as a result of IRCA's employer sanctions provisions. Moreover, MALDEF through its toll-free IRCA hotline (operated from January to July 1987) and its California Employer Immigration Education Program (operated since July, 1988), has received complaints from employers about the burdens IRCA has imposed on businesses.

In many instances, immigrants with proper work authorization face problems that have been created or compounded by INS. Most commonly this has occurred when INS has failed to issue work authorization or to promptly replace lost or stolen documents; issued documents with clerical errors thereby giving the documents a fraudulent appearance; and failed to provide accurate information regarding those documents which are acceptable as proof of work authorization.

For the benefit of the Committee, permit me to expand on those administrative problems at the INS that have posed the greatest difficulty to newly legalized immigrants.

Failure to Issue Work Authorization Promptly

Hardships have often occurred for immigrants and their families when INS has failed to issue work authorization in a timely manner to individuals with pending immigration claims. Wage earners have been terminated by employers who are fearful of sanctions or who refuse to allow the workers time to correct INS' errors. Without work authorization, and faced with the prospect of unemployment, many workers have been forced to the streets to compete with undocumented workers for jobs where both pools of labor are highly exploited. Some of the more frequently encountered problems have involved legalization and affirmative political asylum applicants.

In the case of legalization applicants, Congress clearly intended to extend work authorization to all persons eligible for legalization until their applications for legalization could be processed. Yet cases abound where eligible applicants were either denied or faced protracted delays in obtaining work authorization.

The situation is different as it applies to political asylum applicants. Prior to the passage of IRCA, many individuals with political asylum claims chose not to apply for asylum because of the difficulty in securing approval. Knowing that few asylum applications are approved, undocumented immigrants often found it safer to remain undocumented than to apply and be subjected to deportation.[6] Subsequent to the passage of IRCA, political refugees had to apply for asylum in order to continue legal employment. Although INS regulations require that an affirmative applicant for political asylum receive a decision on his/her work authorization request within 60 days or receive interim work authorization,[7] INS has repeatedly failed to issue such authorizations within the required time period.

The Central American community is particularly affected by this problem. For example, it is estimated that at least 80% of this community was ineligible to register for legalization because they arrived in the United States after the 1982 deadline to qualify for amnesty.[8] In Los Angeles, Central American asylum applications have increased tenfold from a backlog that was down to 500 prior to IRCA, to more than 13,000.[9]

Many political asylum applicants did not receive interim work authorizations. A coalition of immigrants' rights organizations filed a class action lawsuit to compel the Los Angeles regional INS office to abide by INS regulations and to provide work authorization to asylum applicants within the required time period.

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[6] The approval rate is highest for Nicaraguans, 54% of whom received asylum. Only 3% of Salvadorian applications were approved. 65 Interpreter Releases (Federal Publications) 1312 (December 19, 1988).

[7] 8 C.F.R.- 274a.13(d).

[8] Washington Post, May 31, 1988.

[9] Herald Examiner, April 3,1988.

Following the decision in this case, INS cleared up the original backlog of applications for work authorization.[10] Since then, however, INS changed its application requirement without properly informing applicants. Work authorization is issued for such short periods of time that the employer finds no benefit in hiring the person. Other employers are unwilling to accept the document because of its appearance. The work authorization letter is a form letter that provides general information regarding asylum applications, and at the bottom is typed "WORK AUTHORIZED UNTIL ________________". A date stamp provides the expiration date. Employers frequently claim that the document appears fraudulent.

Delay in Replacing Stolen or Lost Documents

Replacement of lost or stolen INS documents can take several months or even years. Prior to the passage of IRCA, such delays were a relatively minor inconvenience. Now any delay in replacing work authorization documents has severe consequences; it deprives the individual of the ability to support him/herself and his/her family and subjects them to employment discrimination.

Issuing Documents With Typographical Errors

Additional problems have occurred when individuals present

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[10] Mendez v. Thornburgh, No. CV 88-04995 TJH (C.D. Cal. filed August 14, 1988).

INS documents with typographical or clerical errors. Although the documents are entirely legitimate, some employers have suspected forgery and have fired or refused to hire the workers.

THE BURDENS IMPOSED ON EMPLOYEES AND EMPLOYERS BY EMPLOYER SANCTIONS

Despite an 18-month period during which INS was obligated to "educate" employers about their new obligations under IRCA,[11] many employers remain confused at best, and oblivious at worst about their responsibilities. According to GAO, 22% of employers surveyed were unaware of the law, and 20% knew of the law but admitted they did not understand the employer sanction provisions.[12] At least half the employers aware of IRCA did not complete the correct number of I-9 forms as required by the law.[13] Small business employers were particularly uninformed.[14]

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[11] Penalties under IRCA's employer sanctions provisions were implemented gradually. From November 6, 1986 to May 6, 1987 was a "6-month public information period," during which no penalties were to be assessed against employers while information regarding IRCA's requirements were disseminated. 8 U.S.C. Section 1324a(i)(1). The next twelve months, from June 1, 1987 through May 31, 1988, was known as the citation period. During this time period, first-time violators were to be issued a citation, rather than a fine, if INS determined an employer was not complying with IRCA's requirements. 8 U.S.C. Section 1324a(i)(2); 8 C.F.R. Section 274a.9(c).

[12] United States General Accounting Office, Immigration Reform: STatus of Implementing Employer Sanctions After Second Year (GAO/GGD-89-16)(1988)[hereinafter GAO Report].

[13] Id.

The Inadequacy of INS' Employer Education Efforts

GAO's employer survey indicated that 31% of all employers had no knowledge of INS' education campaign.[15] Many employers remain unaware of what IRCA requires them to do.

The INS further exacerbated the lack of education about IRCA among employers by printing the required I-9 forms and the Handbook for Employers, only after the citation period began. Also, the INS used the Internal Revenue Service mailing list, containing the addresses of the employer's accountants rather than the employers themselves, to disseminate the handbooks. Since the accountants were not familiar with IRCA, many threw away the handbooks, and as a result many employers never saw them.[16]

Some employers still have not received I-9 forms or copies of the Handbook for Employers. Many of these employers have indicated they are aware that they need to complete I-9 forms, but have had trouble locating these forms. Their attempts to contact INS by telephone have been met with busy signals.

INS has contacted nearly a million employers during its education campaign, but the extent of that contact appears to be minimal. In many instances, INS agents have merely dropped off the Handbook for Employers and told the employers to call if they have any questions. Such minimal contact may help explain why employers are unaware of the finer points of a very complex law.

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[14] Id. at 24.

[15] Id. at 79 (Appendix II).

[16] Reported by INS Senior Special Agent Walter Cadman, "A Seminar on Current Issues Under IRCA," (April 16, 1988)(seminar sponsored by Los Angeles City Bar Association Labor Law Section and American Immigration Lawyers' Association).

Discrimination Caused By Employer Ignorance and Misinformation

Informing 7 million employers about a new and complicated law that represents a major change in employment policy is undoubtedly a daunting task. Immigration is an extremely complex area of the law. IRCA suddenly required employers to become experts in immigration law, but INS has failed to provide employers with the information they need to comply with both the employer sanction provisions and the nondiscrimination provisions of IRCA. As a result, employers have often unknowingly engaged in discriminatory practices.[17]

Widespread discrimination has occurred as a result of employer confusion regarding which documents are acceptable for completion of the I-9 form. The I-9 form itself fails to list most of the acceptable documents. Although the implementing regulations specify that one or a combination of some 30 documents satisfies the verification requirement,[18] the I-9 form lists only 10 documents. The result is that many immigrants, although eligible to work, are not hired because employers are unaware that documents such as the fee receipt or the money order receipt are acceptable to document work eligibility.[19]

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[17] Schumer Report, supra note 23.

[18] 8 C.F.R. Section 274a.2.

Although the Handbook for Employers offers a more complete list of all the acceptable documents, it provides illustrations of only some of the documents. Not included in the selected illustrations are many of the 16 valid versions of the social security card and the 17 valid versions of the "green card" currently in circulation. Employers, not unreasonably, believe that if a document presented to them does not look like one pictured, it must not be genuine. Consequently, many authorized workers are not hired.

Nondiscrimination Provisions Ignored by INS in Educating Employers

Education efforts by INS have focused on sanctions and enforcement, virtually ignoring IRCA's nondiscrimination provisions. In its nearly 20 pages, the Handbook for Employers devotes less than one page to IRCA's nondiscrimination provisions. While the GAO Report demonstrates that INS efforts have failed to educate employers about sanctions, it does not attempt to address how many employers correctly complied with the I-9 record-keeping requirements without discriminating against their workforce. This must be the standard to determine whether employer sanctions have been effectively implemented.

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[19] Legalization fee receipts are acceptable temporary documents for I-9 purposes. Memorandum from INS Assistant Commissioner Raymond P. Penn to Regional Legalization Offices (July 15, 1988), reprinted in 65 Interpreter Releases (Federal Publications) 850, 870 (Aug. 22, 1988).

INS enforcement has also concentrated exclusively on I-9 compliance. As of April 30, 1989, INS had issued 2000 Notices of Intent to Fine for violations of employer sanctions, after investigating more than 19,000 employers. In spite of the fact that IRCA empowers INS to file charges based on its audits of employers' I-9 forms,[20] as of April, 1989, INS was the charging party alleging violations of the nondiscrimination provisions in only six cases. INS also has failed to report to the Office of Special Counsel (OSC) any of the cases of disparate treatment identified by the Department of Labor during that agency's review of employers' I-9 forms.[21]

Employers who believe that the only penalties they will suffer are fines for failing to check documents are more likely to be overcautious in their I-9 compliance efforts, and thus to engage in unlawful discrimination by, for example, requesting too much documentation from employees with Hispanic surnames. Even non-minority American citizens have suffered because of ill-informed and over-cautious employers. There must be balance in the education given to employers, with INS providing information about nondiscrimination as well as about I-9 compliance.

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[20] R. Klasko & H. Frye, Employers' Immigration Compliance Guide at 4 (1989).

[21] GAO Report at 54.

In summary, we believe that the INS must undertake special efforts to minimize the discriminatory effects brought on by the implementation of IRCA. We recommend that the new INS Commissioner undertake a thorough review of the implementation mechanism with the objective of removing those procedures that precipitate or encourage discrimination.

THE "FAMILY FAIRNESS" POLICY SHOULD BE MADE TRULY FAIR AND EQUITABLE TO ENSURE THE INTEGRITY OF THE FAMILY

Although about 1.7 million persons are currently in the legalization process pursuant to IRCA's "amnesty" provisions, millions of other undocumented persons remain ineligible. Of grave concern is the harsh reality faced by eligible persons who have family members who have no available legalization remedy.

In an effort to foreclose the potential family separation in those instances where legalization applicants have ineligible spouses or children, former Commissioner Nelson instituted the "Family Fairness" policy. This policy allows undocumented minors under the age of 18, and who entered the country before November 6, 1986 and have two legalized parents, to apply for "indefinite voluntary departure" (IVD). Spouses of legal temporary residents may apply for "Administrative Voluntary departure" (AVD).

MALDEF, as well as the frontline service agencies, continue to receive reports that ineligible family members continue to be placed in deportation proceedings. Upon closer scrutiny, we have come to the realization that this policy, unfortunately, is little more than a public relations sham--it is, in essence, an overly restrictive policy unresponsive to the needs of immigrant families that may, indeed, result in the entrapment of the unwary. We therefore have taken the position that ineligible family members should not affirmatively seek "fairness" treatment unless they are already in deportation proceedings.

What is wrong with this "Family Fairness" policy. First of all, there is really no national uniform policy nor set of consistent standards and procedures for its implementation. The policy is simply a broad directive encouraging district directors to exercise their discretion. The result of course has been inconsistent adjudication of claims among and within districts. Moreover, the criteria initially set out by former Commissioner Nelson are unduly stringent and inflexible. The limitation of IVD to minor children ignores the needs of parents, siblings and other extended family members. Even minors who are granted IVD are subject to losing this status at the age of 18. Spouses, on the other hand, must apply for the more difficult to obtain AVD which, even if granted, must be periodically reviewed.

Most serious, perhaps, is the problem that the confidentiality provisions applicable to legalization applicants are inapplicable to "Family Fairness" applicants. Moreover, because this program is being implemented by the deportation arm of the INS, an unsuccessful applicant clearly runs the risk of subsequently being apprehended and deported. Finally, neither IVD nor AVD automatically confer work authorization; in fact, a request for work authorization will militate against granting the application.

Until Congress enacts legislation to address this problem, ineligible family members will continue to be part of the insecure, highly-exploitable "underground" that IRCA sought to eliminate. In the interim, the new Commissioner should be given a mandate to fashion a generous and truly "fair" program to address the special problems faced by "mixed" families (i.e. one parent legalized, the other ineligible for legalization). MALDEF recommends that, at minimum, IVD be made available to all dependents of legal temporary residents, that the program not be administered by the deportation branch, that work authorization be granted automatically, and that INS issue national, uniform guidelines and standards to assure consistent implementation.

CONCLUSION

Since its inception the INS has had a rather schizophrenic mandate. On the one hand INS enforcement detains, deports and excludes, and on the other hand it is charged with integrating immigrants into the American mainstream through naturalization. The success of the nominee will be measured on how well he or she can balance these conflicting mandates.

We look to the new INS Commissioner for strong leadership in fostering a new era of improved relations with our community. It is our hope is that the new Commissioner will be both accessible and responsive to the concerns outlined in this testimony.

Senator SIMON. Thank you, Mr. Moreno. Mr. Moreno is regional counsel for the Mexican American Legal Defense and Educational Fund.

Mr. Michael Zamba, we are very happy to have you with us.

STATEMENT OF MICHAEL ZAMBA, WASHINGTON OFFICE DIRECTOR, NATIONAL ASSOCIATION OF LATINO ELECTED AND APPOINTED OFFICIALS

Mr. ZAMBA. Thank you, Mr. Simon. It is a pleasure being here. My name is Michael Zamba. I am the Washington office director for the National Association of Latino Elected and Appointed Officials. We are a national nonprofit, nonpartisan Hispanic civic affairs/research organization. Our members are the more than 3,700 Hispanic elected officials throughout the country.

Many of my comments are going to focus on the naturalization aspects of the Service. As a matter of fact, I am just going to touch on some of the bullets that are mentioned in our testimony and then comment on some of the issues that were brought up throughout the hearing this morning.

During the past 4 years, NALEO has undertaken an ambitious national research and demonstration project on naturalization. This is the only type of project in existence right now. The INS doesn't even have such a project. It includes the operation of a toll-free national hotline, and also conducts citizenship workshops.

In fact, during the last 13 months, we have processed more than 3,000 naturalization applications. That is almost double the number of naturalization applications that were approved in the State of Missouri last year.

While the Judiciary Committee is attempting to assess the qualifications of Mr. McNary to lead the INS, NALEO has not taken a formal stand on the nomination. We have questions regarding his abilities to be the INS Commissioner, but we have yet to meet with him and discuss some of these issues in detail. Instead, NALEO would like to focus its comments on some of the challenges that the Commissioner will be facing if he is approved by the committee.

Today, there are more than 6 million legal permanent residents living in the United States, and more than 4 million of them are from Latin American countries. Additionally, 3 million immigration amnesty applicants could be added to this group of legal permanent residents as a result of the recent legalization program.

What we would like to see the INS do during the tenure of Mr. McNary is move from its passive role in naturalization to a more activist role. Currently, about 10 percent of its budget is slated for adjudications. The remaining 90 percent goes for enforcement-related activities. We don't think that that accurately reflects the balance of resources that are needed to run the Agency properly.

Many of the members of the committee have mentioned some of the severe backlogs in processing of naturalization applications at the INS. In Houston, it is more than a 1-year wait. In Los Angeles, we are dealing with a 6- to 12-month wait. These are really unreasonable waiting periods for people to be waiting to actually be interviewed at the INS. Then they have the added burden of going to the Federal courts, where it could also be another 6- to 18-month wait, depending on what city you live in.

One point that we would like to see Mr. McNary act on fairly quickly, particularly in light of some of the questions about his sensitivity toward minority communities, is the creation of an ethnic advisory committee.

Advocacy groups like NALEO have been working with the immigrant community for years and have a deep understanding of their needs and concerns. For example, we recently released the first national Latino immigrant survey. We conducted more than 75,000 phone calls in order to get a representative sample of legal residents in the United States.

One of the questions we asked was their opinion toward the INS, and it was found that those who have not yet gone through the naturalization process, who have not actually filed their applications, had a very negative perception of the INS, that they would be immediately hauled away if they failed the exam, that they could lose their status.

Yet, we found that those people who did go through the process actually found that typically—I must emphasize "typically"—the examiners were fairly helpful. We need to bridge this gap between those people who have yet to apply and get them into the application pool.

Finally, it was mentioned, a couple points here, on such issues as census and the raid moratorium. NALEO strongly believes that the actions taken by Mr. Lionel Castillo in 1980 were very just.

There is a fear of the Government, regardless which agency is knocking at your door, and we must emphasize to Mr. McNary and to the members of this committee that everybody in the community benefits by a census full count; not just Hispanics, not just Asians, but everybody benefits.

Another point that was raised was accessibility. It is vital that the Commissioner's door remain open to us. On NALEO's part, it has been closed for several years. Tensions have existed between the INS and the Latino community, and we would like to see some of these bridges built.

It was mentioned that telephones are automated. I have personally called these telephone lines and have hung up after about 10 minutes of trying to push the buttons and access the right file that you want to get into. It is entirely inappropriate and it is extremely frustrating.

One of the final points that I was hoping would have been raised to Mr. McNary is here is an agency that is fraught with problems—frustration with immigrant communities, problems with backlogs, questions about balancing enforcement and naturalization, and other service priorities.

I still haven't found out why Mr. McNary wants to take on such a difficult job. I have been following him in the press and I have been listening to the hearings today and, frankly, I haven't seen why.

Finally, the INS' roles and functions have grown enormously in the past 8 years. Indeed, it has gone from a backwater agency to one that is on the front lines of national and international issues.

NALEO encourages the next INS Commissioner to have a greater dialog with the communities that the Agency services. U.S. citizenship is the often overlooked obstacle to social, economic and political advancement of law-abiding, tax-paying permanent residents. Today, one-third of adult Latinos cannot vote or fully participate in society because they are not U.S. citizens. The United States has been made strong by the incorporation of immigrants into its society, and it is a role that should not be overlooked today at the INS.

Thank you.

[The prepared statement of Mr. Zamba follows:]

NALEO

National Association of Latino Elected and Appointed Officials
. . . and the people who support them

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Senior Vice President
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Harry Pachon, Ph.D.
National Director
National Association of Latino
Elected and Appointed Officials (NALEO)
and Kenan Professor of Politics
at Pitzer College in Claremont, Calif.

Before the Senate Judiciary Committee

Tuesday, October 3, 1989

Mr. Chairman and Members of the Committee, the National Association of Latino Elected and Appointed Officials (NALEO) welcomes this opportunity to discuss the nomination of Mr. Gene McNary as the Commissioner of the Immigration and Naturalization Service.

NALEO is a Hispanic non-profit, non-partisan civic affairs research organization that focuses on issues that have an impact on the nation's growing Latino community. NALEO's members include the more than 3,700 Hispanic elected officials and their supporters throughout the nation.

During the past four years, NALEO has been undertaking an ambitious national research and demonstration project on naturalization. This project, which is the only one of its kind, has included the operation of toll-free U.S. citizenship hotline lines, which have received more than 150,000 calls, that has provided information to people from more than 66 countries of origin. In addition, it has conducted more

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than one dozen citizenship workshops in Southern California that have processed more than 3,000 U.S. citizenship applications.

While the Judiciary Committee is attempting to assess the qualifications of Mr. McNary to lead the INS, NALEO is not taking a formal stand on the nomination. Instead, NALEO would like to focus its comments on some of the challenges the INS commissioner will face.

Today, there are more than 6 million legal permanent residents living in the United States -- 4 million of which are of Latin American origin. Additionally, 3 million immigration amnesty applicants could be added to this group as a result of the recent legalization program. These legal residents work, pay taxes, contribute to the economy, raise families and serve in the armed forces, yet they are not fully part of society because they are not U.S. citizens. They cannot serve on grand juries, they are barred from certain government and private sector jobs and they cannot vote.

o Naturalization must be a higher INS priority.

The INS commissioner's office annually draws up a list of its priorities for the coming year. This list, called "initiatives" this year, only casually refers to the service aspect of the INS. In fact, it says the INS should work to relieve adjudication backlogs. While this is of critical importance, there are many other naturalization priorities to be dealt with.

o Reduce Naturalization Backlogs in Key Offices.

In Dallas and Houston, a person who applies for U.S. citizenship has to wait about one year before being called in for the examination. In Miami, a naturalization applicant has a 10 month wait, while Los Angeles has a six month wait. This is because there is a large backlog in these offices.

The INS must direct resources to increase the number of INS naturalization examiners to help eliminate the backlogs. While there have been backlogs in these offices for years, the immigration legalization program caused the INS to shuffle experienced naturalization examiners over to the amnesty program. This has caused additional backlogs in most heavily-used offices.

o Greater Naturalization Resources Should Be Allocated.

Since 1933, the INS has had the unusual dual -- sometimes contradictory -- functions of immigration enforcement and providing service to the immigrant community. Naturalization has lived in the shadows of its bigger brother, enforcement.

Certainly, NALEO, like most organizations, believes in having secure borders and abating the flow of dangerous illicit drugs, in which the INS plays an important role.

Unfortunately, approximately 90 percent of the INS' $857 million budget is earmarked for enforcement-related activities. The remaining 10 percent of the budget is slated for adjudications. With such a small sum of money for U.S. citizenship, it is nearly impossible for the INS to expand the number of examiners, eliminate the long naturalization backlogs in certain areas or undertake any promotional efforts.

o Creation of Ethnic Advisory Committee.

Advocacy groups like NALEO have been working with the immigrant community for years and have a deep understanding of their needs and concerns.

For example, the first comprehensive survey of the Hispanic foreign born, called the National Latino Immigrant Survey, found that most immigrants fear the INS. Those people who have actually applied for U.S. citizenship, however, typically found the examiners to be helpful. This unique situation points to the fact that the INS service providers must enhance their outreach with the immigrant community.

We would like to share these and other insights with the INS on a regular, formal basis. NALEO joins other national organizations in calling for the creating of a special advisory committee that would meet with the INS commissioner on a regular basis, such as once every six weeks. This panel, which could be comprised of local, state and national organizations, could provide the INS Commissioner with a perspective on the people who actually utilize the agency's services.

Conclusion

The INS' role and functions have grown enormously in the past eight years. Indeed, it has gone from a "backwater" agency to one that is on the frontlines of national and international issues. It must have a commissioner that can take firm control of the INS, in terms of balancing its priorities and meeting the needs of the immigrant community.

Legislatively, the next INS Commissioner will have to show leadership with Congress. Legislative initiatives have been undertaken to provide for administrative naturalization and other citizenship issues, and the INS Commissioner will have to be active in their formation and implementation.

Finally, NALEO encourages the next INS Commissioner to have a greater dialogue with the communities that the agency services. U.S. citizenship is the often overlooked obstacle to social, economic and political advancement of law abiding, taxpaying permanent residents. Today, one-third of adult Hispanics cannot vote or fully participate in society because they are not U.S. citizens. The U.S. has been made strong by incorporating immigrants into society, and it is a role that should not be overlooked at the INS.

Thank you.

Senator SIMON. Thank you very much.

Finally, another veteran witness before our committee, Melinda Yee, the executive director of the Organization of Chinese Americans.

STATEMENT OF MELINDA C. YEE, EXECUTIVE DIRECTOR, ORGANIZATION OF CHINESE AMERICANS, INC.

Ms. YEE. Thank you. The Organization of Chinese Americans welcomes this opportunity to testify today before this committee on the confirmation of Gene McNary as Commissioner of INS.

My name is Melinda Yee and I am the executive director of OCA. We have 45 chapters around the country and we were founded in 1973. We are a national nonprofit, nonpartisan network of concerned Chinese Americans. While our focus is on Chinese-Americans, our agenda includes many policy issues, such as immigration, that impact the Asian Pacific American community as a whole.

The position of INS Commissioner is extremely important to our community. The Commissioner should oversee the implementation of immigration policy with a sensitivity to the needs of Asian, Latino, and other ethnic communities that are the most impacted. In addition, the Commissioner should be accessible and practice the basic belief that immigration is healthy and an integral part of America's well-being.

Over the past several years, the OCA St. Louis chapter has worked closely with Mr. McNary while he served as executive of St. Louis County. They have, in fact, called the office, many individuals within the chapter, supporting him. They say he has been responsive and attentive to the local Chinese-American community, and because of this strong support and after much board discussion, OCA has endorsed Mr. McNary. We believe that his background and previous experience have provided him with appropriate administrative skills to provide proper leadership to the INS, and he will, in fact, do a good job once he is in.

We look forward to working with the new Commissioner, particularly on improving recent actions by the INS that indicate a clear lack of compassion to the rights of immigrants.

For example, various individuals and organizations representing the interests of immigrants around the country have expressed grave concerns on the raiding tactics used by the INS in nightclubs and restaurants. I spoke with someone very recently about this situation in San Francisco. It sounds terrible. They say that the INS has been sued for these abuses, in fact. Customers were detained for hours and not allowed to leave until they could show proof of residency. These enforcement procedures may violate civil rights and may be unconstitutional, and the case is still going on right now.

Because of such enforcement procedures and lack of sensitivity by the INS, many recently arrived immigrants have had a difficult time in readily adjusting to their lives in America. Many of these immigrants are poor, have little English-speaking ability, and have become fearful for their safety and future in this country. Essentially, the INS from the Asian Pacific community's perception is more of a foe than a friend.

OCA has several recommendations to the INS that we believe will improve the status and goodwill between the INS and the Asian Pacific American community. These recommendations are further detailed in our written testimony, so I will just briefly mention them.

First, create open dialog between the Asian Pacific American community and the INS. As we have all said, advisory committees at the national, State, and local levels would certainly be helpful.

Two, employ Asian Pacific Americans to high-level staff positions. There are very few Asian Pacific Americans that are at high-level positions now.

Three, design a comprehensive educational program, which includes employing more multilingual staff, creating more multilingual material, and developing outreach efforts.

Four, establish quality control procedures and rules for INS enforcement practices, so examples like the one that I had previously discussed will hopefully soon cease to continue.

Five, develop clear policy with the Presidential administration on issues such as legal immigration reform. Senator Simon had talked about the Hong Kong quotas, and those kinds of things will certainly continue to hopefully be able to educate the new INS Commissioner.

OCA looks forward to a close and productive working relationship with the incoming INS Commissioner and the INS in implementing these and other recommendations. As immigrants continue to enter this country, it is critical that the INS and the United States make a concerted effort to foster a positive relationship with our communities.

Thank you for this opportunity to testify.

[The prepared statement of Ms. Yee follows:]

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TESTIMONY OF
MELINDA C. YEE
EXECUTIVE DIRECTOR
THE ORGANIZATION OF CHINESE AMERICANS

BEFORE THE
UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

REGARDING THE CONFIRMATION HEARING OF
MR. GENE MCNARY
AS COMMISSIONER OF
THE IMMIGRATION AND NATURALIZATION SERVICE

3 OCTOBER 1989

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TESTIMONY OF
MELINDA C. YEE
EXECUTIVE DIRECTOR
THE ORGANIZATION OF CHINESE AMERICANS

BEFORE THE
UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

3 OCTOBER 1989

INTRODUCTION

The Organization of Chinese Americans, Inc. (OCA) welcomes this opportunity to testify today before this Committee on the confirmation hearing of Mr. Gene McNary as Commissioner of the Immigration and Naturalization Service (INS).

Founded in 1973, OCA is a national, non-profit, non-partisan network of concerned Chinese Americans. Since its formation, OCA has been dedicated to promoting the active participation of Chinese Americans in civic affairs at all levels and securing justice, equal treatment and equal opportunities for Chinese Americans. OCA is the only national Chinese American civic organization with headquarters in Washington, D.C. Included in its membership are local, state, and federal-elected officials. While OCA's focus is on Chinese Americans, OCA's agenda includes many policy issues, such as immigration, that impact the Asian Pacific American community as a whole.

DISCUSSION

The position of INS Commissioner is extremely important to the Asian Pacific American community. The Commissioner should oversee the implementation of immigration policy with a sensitivity to the needs of Asian, Latino and other ethnic communities that are the most impacted. In addition, the Commissioner should be accessible and practice the basic belief that immigration is healthy and an integral part of America's well-being.

Over the past several years, the OCA St. Louis Chapter has worked closely with Mr. McNary while he served as Executive of St. Louis County. He has been responsive and attentive to the local Chinese American community. OCA believes that Mr. McNary's background and previous experience has provided him with appropriate administrative skills to provide proper leadership to the INS, and thus, supports his nomination.

OCA looks forward to working with the new Commissioner, particularly on improving recent actions by the INS that indicate a clear lack of compassion to the rights of immigrants. For example, various individuals and organizations representing the interests of immigrants around the country have expressed grave concerns on the 'raiding' tactics used by the INS in nightclubs and restaurants. The INS has been sued for these abuses in which customers were detained for hours and not allowed to leave until they could show proof of residency. These enforcement practices violate civil rights and are often unconstitutional.

Because of such enforcement procedures and lack of senstivity by the INS, many recently-arrived immigrants have had a difficult time in readily adjusting to their lives in America. Many of these immigrants are poor, have little English-speaking ability, and have become fearful for their safety and future in this country. Essentially, the INS is perceived to be a 'foe' and not a 'friend' to the Asian Pacific American community.

RECOMMENDATIONS

OCA has several recommendations to the INS that we believe will improve the status and goodwill between the INS and the Asian Pacific American community.

1) CREATE OPEN DIALOGUE BETWEEN THE ASIAN PACIFIC AMERICAN COMMUNITY AND THE INS

Past INS Commissioner Alan Nelson was, in the most part, inaccessible to the Asian immigrant community. We would like to see a more open-door policy in which the new Commissioner could hear the concerns of Asian immigrants. The establishment of advisory committees at the national, state, and local levels will help to ensure that community input is being provided to decisionmakers at the INS.

2) EMPLOY ASIAN PACIFIC AMERICANS TO HIGH LEVEL STAFF POSITIONS

The INS employs few high level staff members of Asian Pacific American descent. These individuals could provide the Commissioner with specific input on the unique concerns of the community and act as a liaison between the community and the INS.

3) DESIGN A COMPREHENSIVE EDUCATIONAL PROGRAM WHICH INCLUDES EMPLOYING MORE MULTI-LINGUAL STAFF, CREATING MORE MULTI-LINGUAL MATERIAL, AND DEVELOPING OUTREACH EFFORTS

The design of a comprehensive educational program by the INS will help to forge a better relationship with the community. Currently, INS staff often do not speak the languages of the ethnic immigrant communities. Similarly, printed information is often not provided in the appropriate ethnic languages. With this lack of communication, misunderstandings and negative feelings frequently occur between the community and the INS. Outreach efforts need to be developed by the INS for generally educating the community on specific rules and procedures for applications, IRCA provisions, etc.

4) ESTABLISH QUALITY-CONTROL PROCEDURES AND RULES FOR INS ENFORCEMENT PRACTICES

Quality-control procedures and rules need to be established and followed so that current enforcement practices will not continue. As previously discussed, many INS 'raids' are illegal and, as a result, generate tremendous fear in the community.

5) DEVELOP CLEAR POLICY WITH THE PRESIDENTIAL ADMINISTRATION ON LEGAL IMMIGRATION REFORM

Thus far, the community is unclear on the Administration's position on legal immigration reform. OCA and other community groups have worked closely with the Senate and the House to develop comprehensive legislation. The Administration has, thus far, remained silent on the debate this year.

CONCLUSION

OCA looks forward to working closely with the new INS Commissioner and the INS in implementing these and other recommendations. As immigrants continue to enter this country, it is critical that the INS and the United States make a concerted effort to foster a positive relationship with these communities. Thank you for this opportunity to testify.

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REPRINT OF OFFICIAL LETTER FROM OCA ST LOUIS

TO: Frank Liu, President OCA National 1989 26 Sept. 1989
Melinda Yee, Executive Director, OCA National 1989
FR: T.C. Peng, Acting President, OCA-St. Louis, September, 1989.
SU: OCA-St. Louis Support for Gene McNary, the Nominee for Chief, Immigration and Naturalization Service.

OCA-St. Louis expresses its strong support for Mr. Gene McNary in his nomination as the Chief of the US Immigration and Naturalization Service. This support is derived from an opinion poll taken on 23, 24 Sept. 1989 of four members of the Board of Directors, the current President and five Vice Presidents of OCA- St. Louis. The result of this poll is eight (8) in favor, one (1) no opinion, one (1) absent. The most important reason for this support is that Mr. Gene McNary has been very responsive to the OCA-St. Louis in matters regarding Chinese American's request and welfare, at least in the St. Louis area.

As for the alleged insensitivity for the homeless, the OCA-St. Louis does not have the necessary evidence. Furthermore, the OCA-St. Louis believes that St. Louis City, not St. Louis County (Mr. McNary is the County Supervisor, has no jurisdiction over St. Louis City) should not be responsible, since most of the homeless are in St. Louis City.

As for the lack of experience, Mr. McNary has plenty of governing and leadership experience as the St. Louis County Supervisor for the last 12 years. As for the specialty in immigration, there are those career officers and professionals in the Immigration and Naturalization who will no doubt guide and advise any bureau chief to the proper course of action.

For these reasons and our overwhelming support expressed by OCA-St. Louis Board of Director and current officers, it is our sincere hope that OCA-National will consider and respect the position taken by OCA-St. Louis in determining a national position for the purpose of testifying in the confirmation hearing to be conducted by the US Congress on 3 October 1989.

- ATTACHMENT A -

Senator **Simon**. We thank you. Just two questions to each of you, and let me add, I appreciate Mr. McNary staying and listening to the witnesses, which is not ordinarily done by nominees. You know, I think that is helpful to you, also.

SHOULD NOMINEES HAVE IMMIGRATION EXPERIENCE

Totally aside from the present nominee, because four of the five of you have expressed concerns about a lack of background on the part of the nominee, in the future should we change the law to stipulate that a nominee has background, and if so, what kind of requirement should we have in the law?

Ms. Munoz, if I can direct this question to you.

Ms. **Munoz**. Certainly.

Senator **Simon**. And I would like to make clear again that this has nothing to do with the present nominee.

Ms. **Munoz**. We haven't considered the prospect of enacting it in law to have the INS nominee have experience. We certainly think it is important for an INS nominee to have experience.

As I pointed out in my testimony, previous commissioners have been nominated and confirmed without experience, and we are not convinced that it is not a coincidence that the INS is also plagued with management problems. So we think experience is an important criteria. To be perfectly frank, we have never considered enacting it in law. I would hope that it wouldn't be necessary.

Senator **Simon**. Mr. Torres.

Mr. **Torres**. I don't think the Founding Fathers, when they gave the Senate the responsibility for consent to comment on the nominations, envisioned having to put down specific requirements.

I don't think that this position—if you do it for this position, you should do it for every position, Senator. I think that what has happened is that we have lost an idea of what common sense is.

If we had applied some reasonable standards, as every employer does for every position that they hire for, as every one of you—when you hire someone, you have your own idea of what the qualifications should be. Most of it is along the lines of experience along the issues that the person is going to be dealing with.

If we had applied that standard, which is a very minimal standard, a very basic standard, to commissioners long ago, I don't think that we would be at the crossroads that we are today. But because we have not, we are at a situation in which the problems that we have discussed today, we discussed in 1981, Senator.

I mean, I came before you; we didn't even oppose Mr. Nelson. We didn't oppose him because we wanted to give him the benefit of the doubt, as many of you say that we should give Mr. McNary, as many of you will give Mr. McNary. But we haven't already gone down that road, and we have found that in the last 9 years the issues that we have raised were not addressed independently by Mr. Nelson or with direction by this committee, which is unfortunate.

So we come at a crossroads, then, in which the standards now must be, as a matter of principle, established. We must have standards now, and it is unfortunate that Mr. McNary comes at this time, very much like Mr. Lucas did—very much the same type of situation.

Experience is vital now because of what has happened in the past and, better yet, what has failed to take place in the past. And I think that Mr. McNary is an extremely capable person. Obviously, his tenure in St. Louis underscores that.

I agree with you, and we indicated in the testimony, that it would be excellent for him to serve in another capacity—we indicated the same thing with Mr. Lucas—but a capacity in which he does have a forte and that he has got proven experience in. That is very reasonable.

Senator SIMON. Mr. Moreno?

Mr. MORENO. Well, I don't want to, you know, repeat what has already been said. As far as MALDEF is concerned, we haven't looked into a specific law to mandate this. I don't think that that would really be necessary. I think experience is certainly important in any job.

I mean, you go into a job and, you know, if you have some feeling or some sense of, you know, what is expected of you or the situation or what kind of situations you are going to be confronted with, I think that certainly is helpful. But as far as the law specifically, we haven't looked into that and I don't really think it is necessary.

Senator SIMON. Mr. Zamba?

Mr. ZAMBA. Well, Mr. Senator, I would like to see what the help-wanted ad would be for this job if we did mandate it. I think we would possibly tie our hands a little bit if we did mandate this to have any type of experience.

Our organization, I must note, isn't at a point to make a formal recommendation one way or another. We haven't really looked into this, but off the top of my head I don't know if we should necessarily mandate it. But I think any administration should really thoroughly look through its ranks to find somebody who does have the sensitivity and the background.

Senator SIMON. Ms. Yee?

Ms. YEE. A lot has been said. I think from our perspective, we had a Federal appointments panel that was trying to find appropriate people. And I think, if anything, if you all as Senators can work with our communities in trying to find the proper qualifications, clearly the political situation of a person is the most important in political appointments, as the administration had told us, and just sort of work through the process in trying to find the qualifications that might be appropriate.

But, again, I would echo these people, in that it is probably very difficult to write a job description to have some kind of law passed.

Senator SIMON. Senator Simpson.

Senator SIMPSON. Well, Mr. Chairman, thank you very much. It is interesting to note that four of the five of the panel are either supportive or do not have any objection to Mr. McNary, except for you, Arnold. Arnold and I have been through a lot of this stuff together, and it is good to see you back.

You have an institutional memory on this which is beyond mine, and I came to it in 1979. I have come to know you very well and we have shared a lot together in the anguish of immigration reform.

But it is interesting to hear that you are supportive; supportive of this man, and I just feel quite certain he will be confirmed. And I am a little disappointed that you would be objecting to him, Arnold, on the grounds of qualification, which is the same kind of thing that we did here--and you have been honest and put it up—on Bill Lucas.

You know, he is qualified, but if he just would do another thing. I called it in the previous hearing racism in reverse. It is called, "this is a nice job for somebody and we wish it were you, but it is not". And saying that Bill Lucas was insensitive, when he grew up in the ghetto and suffered more than anybody that ever put the quiz on him from the panel, that was just a bad one to watch.

But he got the Order of the Green Weeny, and that was it. They were going to get it for him, and they did, all on the basis that he is a marvelous man, but just not quite qualified for this very sensitive job, which was dealing with blacks, oppressed blacks.

So, you know, that is the kind of stuff that you get to deal with in this arena. One of the disappointing things that we dealt with in illegal immigration reform was that without a bill, these people everyone was so concerned about would never have been legalized. It would never have come to them, and that is something I don't want anybody to forget as we continue to deal with that issue.

It never would have been a separate bill where the Congress of the United States would have legalized 1,700,000 people under amnesty and 1,300,000 under the special agricultural workers; it never would have been.

So I hope we can stay consistent on what we need to do. I guess the important thing to me is that many of you have asked the candidate about access. The members have asked about that. The members have encouraged that he do that. We all heard him promise that he would provide that access. I think it is critical.

I remember you inviting him to the LULAC conventions, as you did me, and he will be accessible. So, that is not an issue to any one of you, is it—that you think that he would not be an accessible public figure to air your concerns and anxieties with?

Ms. MUNOZ. Excuse me, Senator. First, we have heard that he would be accessible within his statements and his responses to your questions today. We are certainly encouraged by that statement. We, quite frankly, would have been more encouraged had he agreed to meet, and we are still looking forward to a meeting.

Senator SIMPSON. OK. Yes, Arnold.

Mr. TORRES. A qualifier. We have been down this road before, and because we have been down the road before, the gentleman, Mr. McNary—there is a euphoria of sorts when they come before you. There are a lot of promises. Initially out of the gate, there is a lot of following through on those promises.

And then as soon as that honeymoon is over, which is before this committee, we go back to reality, and that reality is a tough one because he is going to get it from all sides, as you have said today.

And when that happens, the euphoria is something that just went away a long time ago, and that communication is no longer there. The disposition to discuss things openly and try to reach some reasonable agreement when you can is no longer there.

Now, that is the road we have gone down; that is the road that we had with Lionel, as we did with Mr. Nelson, as we have done with every Commissioner. There is not a lot of staying power.

So, yes, I think that access will, in fact, be granted to us by Mr. McNary initially, but what will happen during the crunch? Mr. Nelson and yourself did come to our conventions many times. We had a very great, open dialog. Some things, you will say for the record, you accepted. Some of the concepts that we threw out, you put in the bill, you said.

Well, what concerns us is that when it came down to the last 2, 3 years of this bill, Mr. Nelson was very difficult to sit down and talk to about issues. And when they did, it was such antagonism that really nothing was going to be accomplished. So that is very important to put in perspective.

I don't question Mr. McNary wanting to meet with us today or within a 2- or 4-week period, but what will happen in his second year, in his third year when his skin would have had to be thick? Is it going to be thick? Is it going to be soft enough at the same time to deal with the concerns that are legitimate that we are going to be raising and we will continue to raise?

Senator SIMPSON. Well, those antagonisms were not just limited to Commissioner Nelson. They arose with members of the committee. So, you know, that is not going to happen. I would like to enter into the record a letter from Mr. McNary to our chairman dated September 26, saying, "I share your concern." I will just paraphrase some of it, and "I want to assure you, as I have other members of the committee, that if confirmed by the Senate, I will seek out and solicit on a regular basis input from these groups interested in our immigration process. I look forward to meeting with them and with interested Members of Congress as soon as possible after taking office."

He will give, quote, "full consideration in fashioning the policies of the Service to those groups affected by the work of the INS." So, that was before today, and I think I would like to enter that in the record, Mr. Chairman.

Senator SIMON. It will be entered in the record.

[The letter referred to was previously entered in the record.]

Mr. TORRES. That is wonderful.

Senator SIMPSON. I think he has been through some tough stuff in St. Louis, and he will need all of that skill in this. He reminds me a bit, frankly, of Sam Skinner at Transportation. He had been through the mill back on your home ground.

And I think when we hear Dick Gephardt speak highly of him and our two colleagues from Missouri, he has tested out pretty well, and he will need all the strength and ability to do it.

We have a very unique oversight role and we take it seriously, this small three-member subcommittee of independent and ornery people. So Ted Kennedy and Paul Simon and myself will be involved in seeing that he does what he said he would do here today, and I have no reason to believe that he won't.

I appreciate your testimony, and I did review it personally and thank you for it very much.

Ms. MUNOZ. Excuse me, if I may, Mr. Chairman.

Senator SIMON. You can get another word in, Ms. Munoz, and then we will hear from our final witnesses.

Ms. MUNOZ. I would like to just correct one assertion. I am sorry that you weren't here to hear some of the statements, Senator. You characterized our positions as being supportive. In fact, we are not supportive. I would hesitate to characterize a lack of strong opposition as support. So I would simply like to say that for the record.

Senator SIMPSON. Well, I looked at that. So what are you saying now so that we have it correct?

Ms. MUNOZ. In our statement we expressed a number of concerns about Mr. McNary's qualifications. We do not support the nomination.

Senator SIMPSON. You do not object to his confirmation, do you?

Ms. MUNOZ. At this point, no. We are, again, asking the committee to take a look at these concerns. We are going to review what we heard from him today and we will take a position.

Senator SIMPSON. Well, that is what I was asking. I said you either approve or you do not disapprove this man, with one exception, and that is Mr. Torres' organization.

Mr. ZAMBA. If I could add, Mr. Senator, we neither have taken a position one way or another, and I think that the lack of disapproval doesn't necessarily mean in this case that we do approve.

Senator SIMPSON. Well, in this line of work, that is a hell of an advantage. [Laughter.]

So I thank you.

Senator SIMON. We thank all of you very much for your testimony.

Mr. TORRES. Mr. Chairman, will you take into serious consideration the request for a management plan to be submitted to the committee after 3 or 4 months or a time period?

Senator SIMON. We would be happy to have any submission you might have.

Mr. TORRES. No, that you request a management plan from Mr. McNary to this committee for review as to how he is going to address the problems that you all have raised with regard to the GAO audit of management problems within the INS.

Senator SIMON. I did not ask for a management plan, but we discussed some questions.

Mr. TORRES. Yes; and I was making that a formal request to the committee that it consider requesting that of Mr. McNary, should he be confirmed. We would appreciate that.

Senator SIMON. We will take your suggestion under consideration.

Mr. TORRES. Thank you very much, Senator.

Senator SIMON. Thank you.

Our final two witnesses are Cheryl Epps of the International Association of Chiefs of Police, and Dan Stein, the executive director of the Federation for American Immigration Reform.

We are happy to have both of you. We will enter your formal statements in the record. We would ask that you confine your remarks to 5 minutes, if you will.

Ms. Epps, we will hear from you first.

STATEMENT OF A PANEL CONSISTING OF CHERYL ANTHONY EPPS, LEGISLATIVE ANALYST, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE; AND DANIEL A. STEIN, EXECUTIVE DIRECTOR, FEDERATION FOR AMERICAN IMMIGRATION REFORM

Ms. EPPS. That is all right. On behalf of the International Association of Chiefs of Police, we would like to thank you for allowing us this opportunity to address you today.

I am here representing our president, Chief Charles B. Reynolds, of Dover, NH, who has addressed this committee on several occasions before. I am pleased to convey our unqualified support for Mr. McNary's nomination.

Because the hour is late, I will simply defer to my written comments on our reasons for supporting Mr. McNary's nomination and for a full elucidation of his close and active association with St. Louis County law enforcement. I will make several brief points in support of his nomination.

We believe, as has been said by many other witnesses, that his administrative experience in the role of executive of St. Louis County makes him indeed an able and qualified candidate for the position of Commissioner of the INS.

We believe from our association and observation of Mr. McNary that his philosophies of law enforcement are indeed such that would make him a qualified enforcer in the INS department.

And we also recognize, as has been said before, that enforcement is not the only task for the INS. There is a human element because, indeed, the INS deals with humans, with people.

We believe that Mr. McNary's establishment of a human resources department in St. Louis County and his work with the elderly, by his own admission, and the handicapped, et cetera, shows indeed the other part of Mr. McNary which will be important to this job with the INS.

For the above reasons and the other reasons that are in our testimony, again, the International Association of Chiefs of Police supports Mr. McNary's nomination. We would also urge the Senate to speedily confirm him to this position.

I would be happy to answer any questions that you might pose.

[The prepared statement of Ms. Epps follows:]

THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

TESTIMONY

IN SUPPORT OF THE CONFIRMATION OF

GENE MCNARY

AS

COMMISSIONER
OF

THE IMMIGRATION AND NATURALIZATION SERVICE

OCTOBER 3, 1989

The International Association of Chiefs of Police is a professional organization comprised of over 14,500 top law enforcement executives from the United States and 76 nations. IACP members lead and manage several hundred thousand law enforcement officers and civilian employees in international, federal, state, and local governments. Members direct North America's largest police departments including New York City, Los Angeles, Toronto, Chicago, Detroit, Montreal, and Houston, and head the national police forces of Israel, Denmark, the Phillipines, Korea, and Liberia, among others. Thousands of suburban and rural police agencies throughout the world are also represented.

Since 1893, the IACP has facilitated the exchange of important information among police administrators and promoted the highest possible standards of performance and conduct within the police profession. This work is carried out by functionally oriented committees consisting of police practitioners with a high degree of expertise that provide contemporary information on trends, issues, and experiences in policing for development of cooperative strategies, new and innovative programs, and positions for adoption through resolution by the association.

Throughout its existence, the IACP has been devoted to the cause of crime prevention and the fair and impartial enforcement of laws with respect for constitutional and fundamental human rights.

CHERYL ANTHONY EPPS is the Legislative Analyst for the International Association of Chiefs of Police. She holds a Juris Doctorate degree from Georgetown University Law Center in Washington, D.C. and the Bachelor's and Master's of Arts degrees from Howard University, also in Washington.

She is a former Assistant District Attorney for the Borough of Manhattan and a former Assistant Special Narcotics Prosecutor for the City of New York. For two years she served as Assistant Counsel to the House Judiciary Committee under Chairman Peter Rodino.

She has been with the IACP for over two and one-half years.

GOOD AFTERNOON SENATOR KENNEDY AND MEMBERS OF THE COMMITTEE. I AM CHERYL ANTHONY EPPS, LEGISLATIVE ANALYST FOR THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE (IACP). TODAY I AM REPRESENTING OUR PRESIDENT, CHIEF CHARLES D. REYNOLDS OF DOVER, NEW HAMPSHIRE. CHIEF REYNOLDS REGRETS THAT HE IS UNABLE TO BE WITH YOU TODAY BUT, UNFORTUNATELY, PRIOR COMMITMENTS PRECLUDE HIS PRESENCE.

THE IACP IS PLEASED TO CONVEY TO YOU OUR UNQUALIFIED SUPPORT FOR MR. MCNARY'S NOMINATION AS COMMISSIONER OF THE IMMIGRATION AND NATURALIZATION SERVICE. WE ENDORSE HIS CANDIDACY BECAUSE WE FEEL THAT HIS PRIOR EXPERIENCE AS A SUCCESSFUL PROSECUTOR, PUBLIC DEFENDER AND HIS 16 YEAR CAREER AS THE ST. LOUIS COUNTY EXECUTIVE MAKE HIM A MOST ABLE AND QUALIFIED NOMINEE. DURING HIS TENURE IN OFFICE, HIS RECORD HAS BEEN UNBLEMISHED AND HIS INTEGRITY HAS NEVER BEEN IMPUGNED. WE BELIEVE THIS IS IMPORTANT IN GOVERNMENT

AND WE WHOLEHEARTEDLY SUPPORT HIS CANDIDACY.

THE IMMIGRATION AND NATURALIZATION SERVICE IS CHARGED WITH MANY FUNCTIONS - MOST OF WHICH INVOLVE THE ENFORCEMENT OF THE IMMIGRATION AND NATIONALITY ACT, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, AND OTHER RELATED CRIMINAL STATUTES. THE COMMISSIONER OF THIS AGENCY SHOULD BE THOROUGHLY EXPERIENCED IN THE ADMINISTRATION OF A GOVERNMENT ENTITY, AND THEN, SHOULD BE WELL VERSED IN THE PHILOSOPHY OF A POLICE FUNCTION, IN GENERAL AND WITH THE SPECIALIZED ROLE OF THIS BRANCH OF GOVERNMENT. THROUGH MR. MCNARY'S ROLE AS ST. LOUIS COUNTY EXECUTIVE, AND HIS CLOSE ASSOCIATION AND SUPPORT FOR THE ST. LOUIS COUNTY POLICE DEPARTMENT, WE AT IACP HAVE BECOME VERY FAMILIAR WITH HIS PHILOSOPHY AND COMMITMENT TO THE LAW ENFORCEMENT FUNCTION AND ALSO WITH HIS ABILITY TO RUN A LARGE AGENCY. WE THINK HE WILL BRING A NEW AND WELCOME DIMENSION TO THE IMMIGRATION AND NATURALIZATION SERVICE.

IN ADMINISTERING ST. LOUIS COUNTY, WE THINK IT MOST

IMPORTANT TO NOTE THAT HE HAS SUBMITTED FOURTEEN (14) BALANCED BUDGETS, WHILE REDUCING THE COUNTY PAYROLL BY SIX HUNDRED (600) EMPLOYEES. HE HAS WON APPROVAL OF THREE SEPARATE BOND ISSUES (IN 1977, 1980, AND 1986) RESULTING IN NEARLY $160 MILLION FOR IMPROVEMENT OF ROADS, PARKS, A TORNADO WARNING SYSTEM, THE FIRST COUNTY POLICE-FIRE TRAINING CENTER AND THE LAKESIDE CENTER FOR GIRLS. HE LED THE EFFORT TO BRING ABOUT AN IN-DEPTH STUDY OF THE NEED TO REORGANIZE AND REDEFINE THE ROLES OF COUNTY AND MUNICIPAL GOVERNMENT.

WE THINK THIS RECORD EXEMPLIFIES THAT OF A CONCERNED YET VERY CAPABLE ADMINISTRATOR. HE IS AN ADMINISTRATOR THAT UNDERSTANDS THAT BUREAUCRACIES CARRY WITHIN THEMSELVES THE SEEDS OF THEIR OWN PARALYSIS AND THUS THE CONSTANT CHALLENGE IS TO REMAIN RESPONSIVE TO THOSE WHOSE WELFARE DEPEND UPON IT.

THE LAW ENFORCEMENT FUNCTIONS OF INS ARE LEGION: THE

INVESTIGATIONS DIVISION IS THE INTERIOR AND PRIMARY ENFORCEMENT UNIT AND FOCUSES ON CRIMINAL ALIENS AND EMERGING CRIMINAL ORGANIZATIONS, CONSPIRACIES AND LARGE-SCALE IMMIGRATION FRAUD, FRAUD PERPETRATED BY INELIGIBLE ALIENS, AND NOTORIOUS EMPLOYERS OF ILLEGAL ALIENS; THE BORDER PATROL ENSURES THAT THE ENTRY OF PERSONS INTO THE UNITED STATES BETWEEN PORTS OF ENTRY IS CONTROLLED IN A MANNER CONSISTENT WITH THE NATIONAL INTEREST AS ESTABLISHED AND PROVIDED FOR BY LAW, AND SUPERVISES THE INTERDICTION OF ILLEGAL DRUGS; THE ANTI-SMUGGLING DIVISION DEALS WITH ALIENS, DRUGS, AND TERRORISM AND TERRORISTS; THIS ENTIRE ENFORCEMENT EFFORT IS SUPPORTED BY AN INTELLIGENCE DIVISION; THE DETENTION AND DEPORTATION PROGRAM DEALS WITH ILLEGAL ALIENS. BY THEIR VERY NATURE, THE FUNCTIONS ARE VITAL TO OUR NATIONAL SECURITY.

WE THINK THAT MR. MCNARY IS AN EXCELLENT CANDIDATE TO MANAGE THE ABOVE MENTIONED FUNCTIONS, BASED ON HIS HISTORY OF WORKING WITH LAW ENFORCEMENT IN ST. LOUIS. THE SUPERINTENDENT OF POLICE

IN ST. LOUIS COUNTY DESCRIBES MR. MCNARY AS HAVING HELPED IMPROVE LAW ENFORCEMENT IN ST. LOUIS BY GIVING THEM MONEY TO AUTOMATE, UPGRADE, AND DEVELOP. HE DID **NOT** JUST KEEP FINDING MORE MONEY FOR THEM. WE THINK THAT THE INS COULD REALLY BENEFIT FROM HIS BRAND OF STRONG CENTRALIZED LEADERSHIP.

IN ST. LOUIS, MR. MCNARY STARTED THE PERSONAL CAR PROGRAM WHERE POLICEMEN COULD TAKE THEIR CARS HOME. HE ESTABLISHED THE 911 EMERGENCY PHONE SYSTEM COUNTY-WIDE. HE INSTALLED COMPUTER AIDED DISPATCHING WHICH IMPROVED POLICE RESPONSE TIME TO EMERGENCIES. HE MODERNIZED POLICE HELICOPTERS TO PROVIDE JET-POWERED RESCUE CAPABILITIES. HE WON A $100,000 AWARD FROM THE FORD FOUNDATION AND HARVARD UNIVERSITY FOR A COMPUTER PROGRAM TO REDUCE THE TIME OFFICERS SPEND WRITING POLICE REPORTS. HE BEGAN OPERATION OF AN AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM TO EXPEDITE AND INCREASE ACCURACY OF FINGERPRINT FILES. HE CONSTRUCTED A NEW POLICE CRIME LAB AND BUILT AND OPENED THE FIRST ST. LOUIS COUNTY POLICE AND FIRE TRAINING CENTER. WE THINK THAT

THIS IS A SOLID RECORD OF ACCOMPLISHMENT IN THE ADMINISTRATION OF THE ENFORCEMENT FUNCTION. WE THINK THIS QUALIFIES HIM TO ADMINISTER AND LEAD THE INS.

ALTHOUGH ENFORCEMENT FUNCTIONS PREDOMINATE IN THE INS, THERE IS ALSO A HUMAN ELEMENT, BECAUSE INS DEALS WITH PEOPLE. THIS ELEMENT OF THE JOB CANNOT BE DISMISSED OR DOWNPLAYED. WE FEEL THAT MR. MCNARY IS WELL QUALIFIED IN THIS AREA ALSO.

IN ST LOUIS, MR. MCNARY ESTABLISHED THE DEPARTMENT OF HUMAN RESOURCES TO ADDRESS A BROAD RANGE OF HUMAN NEEDS. HE CREATED THE COUNTY OLDER RESIDENT PROGRAMS TO PROVIDE TRANSPORTATION, TELEPHONE REASSURANCE, JOBS FOR SENIORS, SENIOR FOLLIES VARIETY SHOW, AND OTHER SERVICES. HE ESTABLISHED THE OFFICE OF VETERANS AFFAIRS TO SERVE THE MORE THAN 140,000 VETERANS IN THE COUNTY. HE HAS PROVIDED EMPLOYMENT TRAINING FOR 53,686 COUNTY RESIDENTS AND HAS REHABBED MORE THAN 6,000 HOMES. HE ESTABLISHED THE OFFICE OF DRUG ABUSE PREVENTION AND INITIATED AN ANNUAL YOUTH

LEADERSHIP AWARD PROGRAM TO RECOGNIZE OUTSTANDING HIGH SCHOOL CITIZENS. THE LIST GOES ON, SENATORS.

IN SHORT, WE FIND MR. MCNARY IMMINENTLY QUALIFIED FOR THE POST OF COMMISSIONER OF THE IMMIGRATION AND NATURALIZATION SERVICE. IT GIVES US GREAT PLEASURE TO SUPPORT HIS NOMINATION. WE URGE THE SENATE TO SPEEDILY CONFIRM HIM IN THIS POST.

THANK YOU FOR GIVING US THIS OPPORTUNITY TO SHARE OUR THOUGHTS WITH YOU. I WILL BE HAPPY TO ANSWER ANY QUESTION.

Senator SIMPSON [presiding]. I was reading your interesting resume, and you did work for Peter Rodino on the House Judiciary Committee. What years did you do that?

Ms. EPPS. When I left Manhattan in 1983—1983 to 1985, Senator.

Senator SIMPSON. OK. Well, you have been there. All right, thank you so much.

Mr. Stein, please, from FAIR.

STATEMENT OF DANIEL A. STEIN, EXECUTIVE DIRECTOR, FEDERATION FOR AMERICAN IMMIGRATION REFORM

Mr. STEIN. Mr. Chairman and Senator Simpson, my name is Dan Stein. I am the executive director of FAIR, the Federation for American Immigration Reform. FAIR is a national membership organization that works to end illegal immigration and reform legal immigration in order to maintain levels that we believe are consistent with the needs and priorities of the Nation.

I am pleased to have this opportunity to present the views of FAIR on the confirmation of Gene McNary as Commissioner of the Immigration and Naturalization Service. Mr. McNary has been the chief executive of St. Louis County since 1974. Prior to that, he was the chief prosecutor of the county, and in both jobs he has the reputation of being an effective, efficient, and competent administrator.

His experience has provided him with the qualifications necessary to be Commissioner of the INS. He has demonstrated administrative ability, and the Commissioner's job is an administrative one. He has also demonstrated political ability, and the Commissioner's job is very definitely a political one. He has also demonstrated an ability in law enforcement, and the Commissioner's job is primarily and foremost a law enforcement one.

Prior to the hearing, two objections have been raised in the press to the confirmation of Mr. McNary. First, Mr. McNary does not have a background in immigration law. That is unfortunate because immigration law is a complex and demanding subject. It is difficult to imagine the President appointing a Commissioner of the Internal Revenue Service who has not had prior knowledge of tax law.

But with a little work, an intelligent person can familiarize himself with immigration law, and we certainly do not believe that the Commissioner of the INS should necessarily be an immigration lawyer.

We do not find that this is an insurmountable or even a serious barrier to confirmation, and therefore we urge that prompt confirmation of Mr. McNary as Commissioner of the INS ensue. Perhaps his lack of prior experience and knowledge will give him some fresh ideas and some fresh outlooks on what is a very difficult situation.

That said, Mr. McNary will be taking over the Immigration Service at a historic, threshold time in American history. We have at this point in time the beginnings of the great global migration push that is associated with the great global population explosion that we have been witnessing now over the last 20 years.

We are watching it today beginning in the newspapers, coming from all over the world—Afghanistan, Eastern Europe, the Soviet Union, Hong Kong, Mexico. There was a survey released in the LA Times a couple of weeks ago. Five million Mexicans are presently intending to move to the United States next year. How many actually do move, no one knows. Certainly, they couldn't all do it legally.

Central America, Ireland—there is no question that Mr. McNary will preside over the INS at a time where there will be massive increases in migration pressure to the United States. Through this, we hope that he will stand for and remember the rule of law on which the true spirit of the United States is built and, in that regard, hope that he will pay attention to the massive amounts of fraud that we have been seeing in the immigration sphere now, particularly in some of the agricultural worker programs that undermine and erode the respect for law that immigrants now seem to be engaging in increasingly on the local law.

We hope that he will maintain an enlarged view of the national interest, and will resist the incessant, relentless, often polarizing carping of parochial advocates and the immigration bar.

In that regard, the development of any kind of advisory council—the Founding Fathers were adamant about opposing the development of an advisory council made up of Supreme Court Justices to advise the Chief Executive because that would in some way mar his independence. Similarly, the development of an ethnic advisory council would also not be in the interests of independence.

There is, therefore, a crying need for an enlarged view. Most Americans sleep at night thinking we have the borders under control, unaware of the fact that at this point we do not. There is a crying need for Mr. McNary, we hope, to be the point man for this administration's overriding, basic immigration policy based on national principles and national needs.

We must all remember that immigration policy first and foremost affects all Americans today, and as a sovereign nation we have the right to control our borders. Immigration affects population growth; development pressure; urban crowding; traffic congestion; crime, certainly, in the Sun Belt; U.S. labor market considerations; our ability to handle other domestic policy considerations, including the educational resources to educate our own people; and, ultimately, our taxes.

In that regard, Mr. McNary's experience as a county executive should favorably endow him with an ability to appreciate how immigration affects on the local level our ability to educate people and provide basic services to American citizens.

Ultimately, the INS has never recovered from its state of neglect in the 1970s, and in the process of rebuilding the INS and trying to find a larger budget in an era of scarce resources, we hope that as a manager he will realize that success as Commissioner is not solely on the basis of the number of applications approved. It is on the number of bona fide applications approved.

The more you approve, the more people file for the backlogs. The more people you naturalize, the more relative petitions you get. It is like shoveling snow in a blizzard. Please, keep that in mind.

Even if you never have to face this, Commissioner-to-be-McNary, we hope that after several years, you will have given us an immigration law that we can be proud of and that the rest of the world will respect.

Thank you very much, Mr. Chairman, for allowing me to present the views of FAIR.

[The prepared statement of Mr. Stein follows:]

TESTIMONY OF

DANIEL A. STEIN

EXECUTIVE DIRECTOR

FEDERATION FOR AMERICAN IMMIGRATION REFORM (FAIR)

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION AND REFUGEE AFFAIRS

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

Hearing on the confirmation of Mr. Gene McNary as

Commissioner of the Immigration and Naturalization Service

October 3, 1989

FAIR
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Washington, D.C. 20009
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TESTIMONY OF DANIEL STEIN
EXECUTIVE DIRECTOR
FEDERATION FOR AMERICAN IMMIGRATION REFORM
ON THE CONFIRMATION OF MR. GENE MCNARY AS
COMMISSIONER OF THE IMMIGRATION AND NATURALIZATION SERVICE

OCTOBER 3, 1989

Mr. Chairman and members of the subcommittee, my name is Dan Stein. I am the Executive Director of FAIR, the Federation for American Immigration Reform. FAIR is a national membership organization that works to end illegal immigration and to reform legal immigration in order to maintain immigration levels that are consistent with the needs and priorities of the nation. I am pleased to have this opportunity to present the views of FAIR on the confirmation of Mr. Gene McNary as Commissioner of the Immigration and Naturalization Service.

Statement on Mr. McNary

Mr. McNary has been the County Executive, the chief executive, of St. Louis County since 1974. Prior to that, he was the chief prosecutor of the county. In both jobs, he has had the reputation of being an effective, efficient, and competent administrator. His experience has provided him with the qualifications necessary to be Commissioner of the Immigration and Naturalization Service: he has demonstrated administrative ability, and the Commissioner's job is an administrative one; he has demonstrated political ability, and the Commissioner's job is very definitely a political one; and he has demonstrated an ability in law enforcement, and the Commissioner's job is primarily and foremost a law enforcement one.

Prior to this hearing, two objections have been raised in the press to the confirmation of Mr. McNary. First, Mr. McNary does not have a background in immigration law. That is unfortunate, because immigration law is a complex and demanding subject. It is difficult to imagine the President's appointing a Commissioner of the Internal Revenue Service who had no prior knowledge of tax law. But with a little work an intelligent person can familiarize himself with immigration law, and we certainly do not believe that the Commissioner of the INS should necessarily be an immigration lawyer. We do not find that this is an insurmountable or even a serious barrier to confirmation.

Second, Mr. McNary has been criticized by a representative of the National Council of La Raza because "his constituency does not have a whole lot of Hispanics and Asians." A representative of the National Association of Latino Elected and Appointed Officials complained that "he doesn't come from an area that's ever been impacted. . . ." We do not find this to be a serious complaint at all. The underlying objection here seems to be that Mr. McNary comes from the heartland of the United States, from the Middle West, and that he may represent the interests of the American people as a whole. FAIR, on the contrary, does hope that in his office as Commissioner Mr. McNary will represent the interests of the American people. We do not believe that the Subcommittee should or will doubt Mr. McNary's qualifications -- or his compassion, his openness, or his concern for all the people of America -- because his home is St. Louis County.

We urge the prompt confirmation of Mr. McNary as Commissioner of the Immigration and Naturalization Service.

The Commissioner's Job: Administration

Mr. Chairman, I said that the Commissioner's job includes administration, politics, and law enforcement. Something should be said here about each of these aspects of the job. The first element that I mentioned is administration.

The Commissioner of the Immigration and Naturalization Service must, of course, have the ability to manage a large, complex government operation. But this ability alone is not sufficient. To run the INS effectively, the Commissioner must have the full confidence of the Attorney General, and he should be delegated the Attorney General's authority to manage the operations of the Service. The INS is primarily a law enforcement agency. Like other law enforcement agencies, it is hierarchical and driven by the authority of superiors, more so than most other governmental bureaucracies. The agency most similar to the INS in this respect is the Federal Bureau of Investigation. Like the director of the FBI, the Commissioner of the INS must be seen by his agency as having been delegated full and independent authority to manage his organization.

One administrative matter which will be of fundamental importance over the next several years will be overseeing the budget of the Immigration and Naturalization Service. For decades, the INS was the neglected stepchild of the Justice Department. It was understaffed and underfunded, deliberately kept on a starvation diet. It is only very recently, after the passage of the Immigration Reform and Control Act, that the INS has begun to receive the budgetary and manpower increases that are necessary for it to do its job effectively, and it has not yet received funding or staffing adequate for its tasks. The Commissioner of the INS must, of course, be a careful money manager. But the INS is not, at least not yet, the proper place for a cost-cutter. On the contrary, the Commissioner should be a vocal and visible advocate, both within the Administration and to Congress, for continued increases in funding and in staffing, particularly for the Border Patrol but also for INS Investigations.

The Commissioner should also recognize that the definition of good management is not the same in a law enforcement agency as in other agencies. Efficiency is not and cannot be the measure of performance in a law enforcement agency. An investigator who conducts ten good, thorough interviews in a working day and who uncovers fraudulent applications in a high percentage of his cases is a better investigator than one who conducts twenty-five hurried and superficial interviews in a working day and who routinely ignores questionable affidavits and applications. A Border Patrol officer who carefully patrols a single mile of the border that is heavily traveled by illegal aliens, and who deters uncountable illegal border crossings, is more effective than an officer who speeds by a hundred miles of border a day, seeing nothing.

Efficiency cannot be made the excuse for lessening the rigor of interviews, investigations, and patrols. As Commissioner, Mr. McNary will have to judge his employees by how well they enforce the law, not by how swiftly they go through the motions. Shoddy work is always a false economy. For example, efficiency can be better achieved by streamlining the adjudications procedure than by routinely granting questionable claims. Efficiency and cost-effectiveness can be promoted by having machine-readable visas and by mandating uniform data collection -- two goals that FAIR supports wholeheartedly. Efficiency and cost-cutting can be better promoted by instituting effective border entry and departure controls.

What the INS needs at this time is stability and continuity of the administrative practices and policies that have been put in place over the past few years. There is no need for elaborate or far-reaching reorganization of the Immigration and Naturalization Service. Specifically, there is no need to centralize the administration of the INS in Washington. In a nation as diverse as the United States, with immigration problems that differ so much from state to state and from city to city, regionalization of administration is necessary and proper. While it may be tempting to centralize administration further in INS Headquarters, such centralization would degrade, not improve, the administration of the INS.

The Commissioner's Job: Politics

The Commissioner of the Immigration and Naturalization Service should also be the Administration's leading spokesman on immigration policy, immigration law, and immigration enforcement. In recent months, the both the Administration and Congress have suffered from the lack of a single person who is given the power and authority to speak for the Administration on immigration matters. The bills currently under consideration in the House of Representatives could have been vastly improved, and the Senate bill could have been spared several crippling amendments, had the Bush Administration been an effective player in their consideration. What has happened, instead, is that the Administration's position has been presented late and without vigor.

A dynamic presentation of the Administration position on immigration would possibly have prevented the addition of so many ornaments to the Christmas trees that the House immigration bills have become. The Administration could have actively opposed the undermining of a rational refugee policy through the farce of "presumptive eligibility." The Administration could have helped preserve the principle of a ceiling on legal immigration on S. 358. The Administration could have helped to fashion a bill that increased the percentage of independent immigrants in preference categories without simply increasing immigration. It could have helped to fashion a bill that limited the chain migration that nepotistically favors certain families.

FAIR hopes that, soon after his confirmation, Mr. McNary will be recognized by the Administration and by Congress as the Bush Administration's primary spokesman on immigration, and we look forward to his being a strong voice in the future.

The Commissioner's Job: Law Enforcement

Finally, the Commissioner is the chief of a law enforcement agency. Congress, in its dealings with the Immigration and Naturalization Service, often seeks special favors and dispensations for aliens, special exceptions from the law. Congress is most often concerned with the "service" aspect of the INS, and is more often upset when an alien is denied an undeserved benefit than when benefits are undeservedly granted. But there is no split between the enforcement and legalization purposes of the INS. They are two sides of the same coin.

We all should be able to agree on one aspect of the INS's law enforcement agenda. The INS is the single most effective agency in our war on drugs. It interdicts 60 to 70 percent of the drugs that are found on the border, and it does it as an integral part of its routine responsibilities. The Organized Crime Drug Enforcement Task Force of the Investigations Division has targeted the growth of Chinese Organized Crime groups and Jamaican posses nationwide. In the Washington, D.C., metropolitan area, the Alien Criminal Apprehension Program of the Investigations Division has instituted OPERATION MADCAP, a cooperative task-force initiative that works against drug-based criminal activity by aliens. OPERATION MADCAP, in which INS special agents have worked with federal, state, and local enforcement agencies, is a successful experiment and a good model for nationwide expansion.

But there are harder, less popular aspects of the INS's mission. Enforcement entails asserting authority, making hard decisions and hard denials of benefits, and causing pain. The Commissioner must support the Service when these hard decisions and denials of benefits are made. It is easier to accommodate demand; it is more pleasant to abandon standards; it is more obliging to retreat before every attack. But the INS, as an enforcement agency, must be imbued with a sense of purpose, of boldness, and of truthfulness. It cannot accommodate itself to law breaking and to fraud. And it is the Commissioner's job to impart that sense of purpose to everyone in the Service.

Let me give just a few examples.

1) Employer sanctions must be enforced energetically and forcefully. Employers do not like to be caught hiring illegal aliens; they do not like to be fined; and the employers of illegal aliens can be influential constituents. But one of the highest priorities for the new Commissioner will be to enforce employer sanctions; it is still our best hope for gaining control over illegal immigration.

2) Adequately guarding the border against illegal immigration requires stringent measures that can be controversial. The INS must support the border security measures that are necessary for it to do its job, measures that are detailed in FAIR's January 1989 report, *Ten Steps to Securing America's Borders.*

3) The agricultural amnesty has been rampant with fraud, and the INS should tackle this problem fearlessly, regardless of the influence and power of the agricultural interests. INS should take the lead in repealing the RAW program.

4) English literacy tests for amnestied illegal aliens are going to be administered by voluntary agencies to which the INS has delegated this responsibility, not by the INS itself, and these tests are unquestionably going to be riddled with fraud.

5) Some offices of the INS -- out of a false sense of economy and efficiency -- do not even do a file check when aliens claim that they have lost their cards. It simply issues new cards when asked, and undoubtedly tolerates a high percentage of fraud in these claims.

6) Marriage fraud, even after the recent amendments to the INA, is widespread. Yet, because of backlogs, the INS is routinely granting hardship waivers of conditionality in marriage fraud cases. In addition, the INS is not actively defending itself against attacks on the marriage fraud amendment.

As an enforcement agency, the INS must be aware, concerned, and apprehensive. The Service should become institutionally upset at fraud. It should be quicker to sue -- and more steadfast in defending itself against lawsuits.

The task of the Immigration and Naturalization Service will be just as challenging in the future as it has been over the past decade. Its position will be just as difficult, and its enemies just as implacable. FAIR wishes to welcome Mr. McNary to this difficult, formidable position. We look forward to working with him for many years.

Mr. Chairman and members of the Subcommittee, I thank you for this opportunity to present FAIR's views on the confirmation of Mr. McNary, and I welcome any questions you may have.

Senator SIMON [presiding]. We thank both of you very, very much, and I regret I was called out and I didn't have a chance to hear your testimony, but I have read the testimony of both of you.

Senator Simpson.

Senator SIMPSON. Mr. Chairman, I heard the comment about the American immigration lawyers, and I do remember an event when Congressman Mazzoli and I were invited to attend and we walked in back to back like gunfighters. I remember that, quite an experience, actually.

They are players here, and they have a great responsibility which, in my mind, they have not yet met. You know, it is easy to just be involved in taking a client's money and getting a particular visa for a particular person, but I think they have a greater role than that. And I was disappointed in some cases with their role in the legalization as they charged people for their services when those services were available from the INS and available from voluntary agencies. That was a wretched excess.

So, you know, they are players, and I hope that they won't just be consumed by greed and will get in and assist some very beleaguered people from around the world. I look for more from them than they have given to date.

Just one thought, quickly, if you would, because I have to go. What do you believe is the appropriate balance between the law enforcement role of the INS and its service provision? We always hear that. What is your thought about that?

As he attempts to allocate resources to these two main areas of INS operation, what is the appropriate balance between those two, may I ask you, Ms. Epps?

Ms. EPPS. Senator, we have talked about that and thought about that within the IACP as we contemplated this testimony, and I cannot honestly say for you that we came up with a definitive answer.

We think, of course, because we represent law enforcement, that the law enforcement effort is very important. But as I noted in my testimony, on the other hand, the human element is, too.

Finally, we decided that we would not put a specific percentage on those two functions. We would instead hope that Mr. McNary, in his role as the Commissioner, would simply look at them as two hands, the two sides of his main function, and would equally approach them with importance because for those of us who do law enforcement and have done it for a long time, when we look at the INS we simply cannot separate those two functions.

Senator SIMPSON. Thank you. Mr. Stein, briefly, please.

Mr. STEIN. Senator Simpson, I think it is difficult—FAIR thinks it is difficult to look at it as a zero-sum game. The more you accelerate or deliver services, history has shown, because of the nature of the law and how it is structured, the greater your administrative burdens become. The greater your naturalization rates, the larger your preference petitions become.

So if you are trying to increase your service delivery and resource allocations in that regard, ultimately you will wind up with a larger workload than you started with in the first place.

That, added to the institutional pressure as a manager to speed applications through, makes it difficult to find a really effective trade-off. Ideally, of course, we need more enforcement resources, and they really shouldn't be competing with one another, Senator Simpson.

Senator SIMPSON [presiding]. Well, thank you very much to this panel, and I know on behalf of the Chairman and Senator Simon we do appreciate this hearing and we appreciate the testimony of all of you.

Thank you, Mr. McNary, for your presentation of your views, and I commend you for your availability to the members of the committee and the subcommittee. Indeed, that same availability will be important to the people that have testified today, and I think that is really the signal thing that I feel that the subcommittee hopes for, and you have already committed to it.

So, with that, then, on behalf of the chairman, the hearing is concluded. Thank you.

[Whereupon, at 5:20 p.m., the committee was adjourned.]

APPENDIX

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 10, 1989

The Honorable Joseph R. Biden
Chairman
Senate Judiciary Committee
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Enclosed are the responses of Gene McNary to the written questions of Senators Thurmond, Kennedy, Hatch, McClure, Symms, DeConcini and Simon in connection with his nomination as Commissioner of the Immigration and Naturalization Service.

If we may be of any further assistance please let us know.

Sincerely,

Carol T. Crawford
Assistant Attorney General

Enclosures

cc: The Honorable Strom Thurmond
Ranking Minority Member

RESPONSES OF GENE MCNARY TO QUESTIONS SUBMITTED BY SENATOR KENNEDY

(Origanal Questions Attached For Your Convenience)

Question 1: Would you explain to the Committee your views on the Refugee Act's implementation?

Answer: I am still reviewing the Act and all of its provisions, but I think the point which jumps right out at me, is its adherence to a world-wide standard for individually adjudicating refugee status. This standard must be fair and compassionate, and should focus on the circumstances of each person applying for admission.

Question 2: Do you think INS has been overly strict in making asylum decisions? Should INS be more liberal in its interpretation of what a "well-founded fear of persecution" is?

Answer: As a nominee, I am in no position to judge the processes currently used by the INS in making those decisions. I do believe, however, that the 1980 Refugee Act is clear in both its language and its intent. If confirmed, I will ensure that it is followed, both in substance and intent.

Question 3: How do you view the Soviet refugee determination process now?

Answer: As I stated during my confirmation hearing, I intend, if confirmed, to travel to the Soviet Union as soon as possible. I will make a first-hand assessment of the refugee process there and I will seek this Committee's counsel before I leave. I also look forward to sharing my observations with you upon my return. This is an important issue and will be one of my highest priorities. I want to ensure that the process works and is consistent with our national objectives and obligations and the spirit and intent of the Refugee Act.

Question 4: Can you assure us that the process will not be "out of sight, out of mind" when moved to Moscow, which is less accessible to the American public?

Answer: As I stated above, I intend to view the process first hand and I can assure you further that it will be open in all respects. As I indicated during my hearing, I will also explore the possibility of having voluntary organizations participate in the application process in Moscow.

Responses to Questions Submitted By Senator Kennedy (Con't.)

Question 5: Have you had a chance to examine these [Kennedy-Lautenberg provision re Soviet refugee]? If confirmed would you be willing to work with us to ensure that the procedures and standards used in Moscow are beyond reproach?

Answer: I have not reviewed those provisions in detail, but I can give you my personal assurance that existing law will be followed to the letter and that I will work with you and other Members to ensure that the process will be beyond reproach.

Question 6: What is your view of the importance of public education in the INS Commissioner's job?

Answer: I believe that the public's knowledge and understanding of the immigration laws and regulations of this nation is vital. An informed public is the best hedge against violations of the law, and you can be assured that I consider this responsibility to be one of my highest priorities. I am particularly concerned that this effort be enhanced in areas of INS responsibility where there has been some public confusion (e.g., Employer Sanctions, Anti-Discrimination provisions). I am aware that public education played a major role in the recent success of the amnesty program.

Question 7: Do you believe it is important to devote resources both to educating employers regarding their obligations under the immigration law and informing job applicants of their right to pursue immigration-related job discrimination claims?

Answer: Yes to both. I am, as I have said, committed to maximum public education about the nation's immigration laws and regulations. Only through understanding of both their respective rights and obligations can employers and would be employees benefit.

Question 8: [Regarding the claim of low naturalization rates among certain communities] Does this concern you? Do you believe we should try to do more to encourage naturalization among those who are eligible?

Answer: I am indeed concerned about low rates of naturalization among eligible persons from any immigrant community. To me, citizenship is equivalent to a piece of the American Dream. I am anxious to work with you to explore ways of encouraging all who are eligible to apply, and try to ascertain why the rates may be lower in one community over another.

Responses to Questions Submitted by Senator Kennedy (Con't.)

Question 9: What are your views about the importance of a viable mechanism within the INS to thoroughly address complaints of enforcement abuses as they occur and to train officers to avoid abuses?

Answer: Let me state, without reservation, that abuse by law enforcement officers of the public, whether physical or otherwise, is counter to everything I believe about public service. If confirmed, I simply will not tolerate it at INS. Period. I believe that training of INS personnel to avoid abusive behavior is an essential element in carrying out our responsibility. In my experience as a prosecutor and county executive, I have worked with police departments to professionalize their operations and performance, and I will use this experience as a model to follow if I am confirmed as Commissioner.

Question 10: Do you intend to recruit qualified minority applicants into senior positions at INS?

Answer: I fully intend to seek out and recruit senior managers who are both qualified and representative of the diverse ethnic and cultural composition of our nation. In St. Louis County, for example, the most recent figures indicate that while blacks make up 11.3% of the population, they make up 16.2% of County employees. Recent hires for 1988, in the County, have been 53% men and 47% women. I have also recruited many women and minorities to fill positions on County boards and commissions.

Question 11: Would you be prepared, if confirmed, to revisit the policy [regarding the deportation of family members related to amnesty applicants]?

Answer: I would be pleased to receive and review any thoughts on this subject which Members of the Committee desire to provide.

QUESTIONS FROM SENATOR KENNEDY

ASYLUM STANDARDS AND PROCEDURES

Since passage of the Refugee Act in 1980, the United States has operated the asylum process only under interim regulations. And new regulations proposed in 1987 and 1988 were never finalized.

Over this period, the asylum and refugee determination processes have suffered from a lack of clear criteria to implement the refugee definition.

In March 1987, in INS v. Cardozo-Fonseca, the Supreme Court found that the standard the INS was applying in making asylum determinations was too rigid. Yet, no clear articulation of a new standard has emerged from the Justice Department.

Obviously, this is an area which will require the new Commissioner's attention.

Question: Would you explain to the Committee your views on the Refugee Act's implementation?

Do you think INS has been overly strict in making asylum decisions? Should INS be more liberal in its interpretation of what a "well-founded fear of persecution" is?

SOVIET REFUGEES

A major controversy over the past year has been the INS' handling of Soviet refugee applications.

Rejection rates went from nearly zero to over 30% over just a few weeks. About half of the denied cases ultimately reviewed by INS were overturned.

And the General Accounting Office reported in March:

- -- uneven knowledge among INS officers of conditions in the Soviet Union
- -- wide variations in approval rates among officers handling the same caseload.

Now the whole process is being moved to Moscow.

Questions:

-- How do you view the Soviet refugee determination process now?

-- Can you assure us that the process will not be "out of sight, out of mind" when moved to Moscow, which is less accessible to the American public?

-- The Senate has adopted the Kennedy-Lautenberg provision which contains standards for adjudicating Soviet applications, and the House has also passed the Morrison version.

Have you had a chance to examine these? If confirmed would you be willing to work with us to ensure that the procedures and standards used in Moscow are beyond reproach?

PUBLIC EDUCATION -- ON DISCRIMINATION, EMPLOYER SANCTIONS, AND NATURALIZATION

One of the lessons from the implementation of the 1986 Immigration Act is the importance of public education. It is effective when it is done -- as turnout for the amnesty program suggests. But it is also apparent when it is not done. For example, GAO reported that one-sixth of the employers it surveyed were handling job applicants in ways which may be discriminatory under the 1986 Act.

-- What is your view of the importance of public education in the INS Commissioner's job?

-- Do you believe it is important to devote resources both to educating employers regarding their obligations under the immigration law and informing job applicants of their right to pursue immigration-related discrimination claims?

-- Naturalization: In addition, as the witnesses who follow point out, naturalization rates among certain communities -- especially Mexican nationals -- are extremely low.

Does this concern you? Do you believe we should try to do more to encourage naturalization among those who are eligible?

IMMIGRATION ISSUES RAISED BY MINORITY PANEL

We have already touched upon a number of the issues and recommendations made by the panel to follow you.

I wonder if I might get your views on a couple of additional points they raise.

-- enforcement abuse: This is a significant concern, especially within minority communities. As MALDEF reports, sometimes this is handled in court. But what are your views about the importance of a viable mechanism within the INS to thoroughly address complaints of enforcement abuses as they occur and to train officers to avoid abuses?

-- minority hiring: Very few minorities hold senior positions within the INS. Would you intend to recruit qualified minority applicants into senior positions?

-- amnesty families: The Senate passed provisions to stay the deportation of spouses and children of persons who obtained amnesty. The House has also passed similar legislation. But it may take some time for this to become law. INS already has a narrowly defined policy of staying the deportation of some family members. Would you be prepared, if confirmed, to revisit this policy?

RESPONSES OF GENE MCNARY TO QUESTIONS
SUBMITTED BY SENATOR THURMOND
(Original Questions Attached For Your Convenience)

Question 1: As the head of a large agency, an individual must possess strong management skills. Would you please highlight the experience you have had that would be beneficial to you as Commission of the Immigration and Naturalization Service, and also tell the Committee your primary management goals.

Answer: I have served for more than 15 years as the County Executive of the largest county in the State of Missouri. I am responsible for a local government employing more than 4,000 employees and serving over 1 million people. During my tenure in office, I have balanced the County's budget every year, without fail, and yet, have been able to provide a consistently high level of service to all of my constituents, including those most in need of the County's assistance. If confirmed as INS Commissioner, I would bring that same level of dedication to fiscal responsibility and service to my duties at INS. I believe the INS must stand, first and foremost, for fair, consistent and humane enforcement of the nation's immigration laws, and its personnel must be highly trained and professional in all respects.

Question 2: In your opinion, Mr. McNary, does the Immigration and Naturalization Service have adequate resources to deal with the illegal alien problem in this country? And if not, why?

Answer: I have not yet had the opportunity to fully review all that the INS is doing, or could be doing, with regard to the illegal alien problem in this country. I understand that much has been accomplished over the past few years in this area, more can and must be done. I am not yet in a position to comment on the adequacy of the INS' resources in this regard, but will make such an assessment among my highest priorities upon taking office, if I am confirmed. We all must work with finite resources; I will do the best I can with the resources at hand.

Question 3: Mr. McNary, I would like to address the issue of cooperation between the Immigration and Naturalization Service and local law enforcement agencies. To what extent will local law enforcement agencies be used to help secure our borders, and if confirmed as Commissioner of the Immigration and Naturalization Service, would you propose to increase active involvement between local police and Immigration and Naturalization Service personnel?

Responses to Questions Submitted by Senator Thurmond (Con't.)

Answer: I am a firm believer that organizational cooperation, at every level, is imperative if INS is to do its job. As a county executive and former county prosecutor, I am fully aware of the important role local law enforcement can play in supplementing federal law enforcement, and I will endeavor to foster such cooperation, consistent with all DOJ guidelines bearing on such cooperation.

Question 4: Mr. McNary, in the past, some have stated that the Immigration and Naturalization Service responds to crisis situations rather than undertaking long range policy planning to preclude such situations. If you are confirmed, what would you consider to be your major long term priorities during your tenure as I.N.S. Commissioner?

Answer: Briefly, to ensure that INS provides fair, competent and compassionate service to those whom it serves, to see that its implementation of its law enforcement authority is in complete accord with the laws of our nation and conducted with respect for the rights of those processed through that system. Any policy initiatives I might suggest would start with these goals in mind.

QUESTIONS FOR MR. GENE MCNARY

1. AS THE HEAD OF A LARGE AGENCY, AN INDIVIDUAL MUST POSSESS STRONG MANAGEMENT SKILLS. WOULD YOU PLEASE HIGHLIGHT THE EXPERIENCES YOU HAVE HAD THAT WOULD BE BENEFICIAL TO YOU AS COMMISSIONER OF THE IMMIGRATION AND NATURALIZATION SERVICE, AND ALSO TELL THE COMMITTEE YOUR PRIMARY MANAGEMENT GOALS.

2. IN YOUR OPINION, MR. MCNARY, DOES THE IMMIGRATION AND NATURALIZATION SERVICE HAVE ADEQUATE RESOURCES TO DEAL WITH THE ILLEGAL ALIEN PROBLEM IN THIS COUNTRY? AND IF NOT, WHY?

3. MR. MCNARY, I WOULD LIKE TO ADDRESS THE ISSUE OF COOPERATION BETWEEN THE IMMIGRATION AND NATURALIZATION SERVICE AND LOCAL LAW ENFORCEMENT AGENCIES. TO WHAT EXTENT WILL LOCAL LAW ENFORCEMENT AGENCIES BE USED TO HELP SECURE OUR BORDERS, AND IF CONFIRMED AS COMMISSIONER OF THE IMMIGRATION AND NATURALIZATION SERVICE, WOULD YOU PROPOSE TO INCREASE ACTIVE INVOLVEMENT BETWEEN LOCAL POLICE AND IMMIGRATION AND NATURALIZATION SERVICE PERSONNEL?

4. MR. MCNARY, IN THE PAST, SOME HAVE STATED THAT THE IMMIGRATION AND NATURALIZATION SERVICE RESPONDS TO CRISIS SITUATIONS RATHER THAN UNDERTAKING LONG RANGE POLICY PLANNING TO PRECLUDE SUCH SITUATIONS. IF YOU ARE CONFIRMED, WHAT WOULD YOU CONSIDER TO BE YOUR MAJOR LONG TERM PRIORITIES DURING YOUR TENURE AS I.N.S. COMMISSIONER?

RESPONSES OF GENE MCNARY TO QUESTIONS
SUBMITTED BY SENATOR HATCH
(Original Questions Attached For Your Convenience)

Question 1: What is your view about the resources needed [by the Office of Special Counsel] to carry out its tasks?

Answer: As a nominee, I am not in a position to comment on any question regarding the resource requirements of a Departmental component, particularly one that is not a part of the INS. I would like to say, however, that the role of the Special Counsel is one, I understand, that INS has not only accepted, but has worked to assist. If confirmed, I will ensure that this measure of support continues.

Question 2: Do you believe the Office of Special Counsel should be given an enlarged role in employer education about the anti-discrimination provisions [of IRCA]?

Answer: I am not in a position, at this time, to comment specifically on this proposal. I do understand, however, that INS has worked closely and extensively, in this effort, and has given generously of its resources to assist the Special Counsel in this educational effort. The result, I am told, has been a marked increase of cases being filed with the Special Counsel.

Senator Hatch's Questions for Gene McNary

1. I have previously expresed my concern to Attorney General Thornburgh that the Office of Special Counsel, established to enforce the anti-discrimination provisions of IRCA, be given adequate funding to do its job and to educate employees and others about the anti-discrimination requirements. (a) What is your view about the resources needed to carry out these tasks? (b) Do you believe the Office of Special Counsel should be given an enlarged role in employer education about the anti-discrimination provisions.

RESPONSES OF GENE MCNARY TO QUESTIONS SUBMITTED BY SENATORS MCCLURE AND SYMMS

(Original Questions Attached For Your Convenience)

Question 1: Mr. McNary, are you familiar with the INS's "Priority Implementation Plan?"

Answer: I generally have a basic understanding of the program.

Question 2: What is your philosophy of management concerning systems such as the Priority Implementation Plan?

Answer: I cannot respond in detail because my knowledge of the program is limited. I do want to state, however, that such plans must be careful not to convey the wrong impression to the managers in the field, nor become a vehicle for enforcement quotas, without regard to the merits of the potential offense. I am informed that the INS is reviewing the program, as a result of concerns raised by Members, including yourselves, and is reevaluating the value of such a program. If confirmed, I will involve myself personally in that reevaluation effort.

Question 3: Do you believe that when auditing employers' records, maximum fines should be levied to punish employers for violating IRCA or do you feel that audits and fines should be used as a tool to educate employers on the correct way to complete necessary INS forms?

Answer: In my experience in law enforcement, both as a prosecutor and a public defender, I have come to resolutely believe that the punishment must fit the offense. The concerns you raise may, in large part be due to the need for greater education on the employer sanctions laws and regulations, and I will make that a high priority, if I am confirmed. Inadvertent oversights in completing forms, however, should be carefully reviewed so as to not treat them as other, more serious violations of the law.

Question 4: What would you do to improve the ability of INS to educate and instruct employers as to the requirements of IRCA?

Answer: As I stated above, I believe that public education and understanding of the immigration laws and regulations of this nation are vital. An informed public is the best hedge against both excessive and unintentional violations of the law. I want to create an environment where all of those affected by the work of INS have access to and an opportunity to understand the immigration laws and regulations of our nation.

Jim McClure

MR. MCCLURE AND SENATOR SYMMS: THANK YOU FOR ALLOWING US TO SUBMIT QUESTIONS ADDRESSED TO MR. MCNARY WHO HAS BEEN NOMINATED FOR THE POSITION OF COMMISSIONER OF THE IMMIGRATION AND NATURALIZATION SERVICE. WE ARE IMPRESSED WITH HIS QUALIFICATIONS AND EXPERIENCE. WE HAVE SEVERAL CONCERNS WITH THE MANNER IN WHICH THE INS IS CURRENTLY BEING RUN.

MR. MCNARY, ARE YOU FAMILIAR WITH THE INS'S "PRIORITY IMPLEMENTATION PLAN"?

THIS PLAN SETS A SERIES OF NUMERICAL PROJECTIONS FOR INS PERSONNEL TO MEET. THESE ARE USED AS A MEASURE OF PRODUCTIVITY OF THE PERSONNEL. THE PERSONNEL ARE MONITORED BY INS IN AN EFFORT TO HAVE THEM MEET OBJECTIVES SET BY THE CENTRAL OFFICE. SENATOR SYMMS AND I ARE VERY CONCERNED THAT THIS PLAN IS FORCING INS OFFICIALS WHO AUDIT EMPLOYERS UNDER THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 (IRCA) TO SEARCH FOR MINUTE VIOLATIONS OF IRCA AND TO FINE EXCESSIVELY ON VIOLATIONS. WE FEEL THAT THIS TYPE OF A QUOTA SYSTEM WILL MAKE INS AUDITORS MORE WILLING TO ISSUE FINES AND LESS WILLING TO EDUCATE EMPLOYERS TO BRING THEM INTO COMPLIANCE WITH THE LAW.

WHAT IS YOUR PHILOSOPHY OF MANAGEMENT CONCERNING SYSTEMS SUCH AS THE PRIORITY IMPLEMENTATION PLAN?

DO YOU BELIEVE THAT WHEN AUDITING EMPLOYERS RECORDS MAXIMUM FINES SHOULD BE LEVIED TO PUNISH EMPLOYERS FOR VIOLATING IRCA OR DO YOU FEEL THAT AUDITS AND FINES SHOULD BE USED AS A TOOL TO EDUCATE EMPLOYERS ON THE CORRECT WAY TO COMPLETE NECESSARY INS FORMS?

WHAT WOULD YOU DO TO IMPROVE THE ABILITY OF INS TO EDUCATE AND INSTRUCT EMPLOYERS AS TO THE REQUIREMENTS OF IRCA?

RESPONSES OF GENE MCNARY TO QUESTIONS SUBMITTED BY SENATOR DECONCINI
(Original Questions Attached For Your Convenience)

Question 1: [Regarding a report concerning INS in the Senator's possession] Are you aware of the 20 page report I have been briefed on and have you read the report?

Answer: I have not seen the report which you referenced at my recent hearing.

Question 2: Could you briefly describe what steps you plan to take to get the situation under control at INS and restore direction to this fine agency?

Answer: In my more than 20 years in public service in the County of St Louis, I have been responsible for a local government employing more than 4,000 employees and serving over 1 million people. I am a firm believer in giving the public full value for their tax dollars. During my tenure in office, I have balanced the County's budget every year, without fail, and yet, have been able to provide a consistently high level of service to all of my constituents, including those most in need of the County's assistance. If confirmed as INS Commissioner, I would bring that same commitment to fiscal responsibility and service to the public to my duties at INS. I believe the INS must stand, first and foremost, for fair, consistent and humane enforcement and administration of the nation's immigration laws, and its personnel must be highly trained and professional in all respects.

Question 3: Do you plan to centralize operations and bring back control to Washington?

Answer: That is certainly an approach I intend to consider very seriously and which I stated, during my hearing, I believe is needed at INS. It would be both premature and inappropriate, however, for me to commit to specifics until I have had an opportunity to judge for myself and evaluate the current INS structure in detail.

Question 4: Do you favor a move [to return INS to a more traditional role of enforcing the immigration laws], and how would this affect INS's role in drug enforcement and interdiction operations?

Answer: If confirmed, I expect to evaluate INS' role in drug interdiction very quickly. I am concerned, however, that INS' primary mission of enforcing the immigration laws and providing efficient services to those who apply not be weakened or

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diminished as a result of greater involvement in drug enforcement. I believe we must be mindful of our primary mission.

Question 5: Are there any plans to increase manpower for the Border Patrol along the Southwest border?

Answer: As a nominee, I am not privy to any plans relating to Border Patrol enhancement. However, the Border Patrol's role is essential and whether more resources, better training or more efficient deployment are required, will be given careful evaluation by me, and is one of my most important responsibilities.

Question 6: Do you intend to make changes in the current method of funding for [Operation] Alliance by INS and what will the changes be?

Answer: As a nominee, I am not in a position to comment on a question regarding the resource requirements of a Departmental program. As a county official I know the importance of cooperative state, local and federal law enforcement working partnerships.

Question 7: What steps have been implemented or will be in the near future to prevent another Central American crisis, such as that which occurred in Harlingen, Texas in 1988?

Answer: The INS needs and should have contingency plans with regard to possible future situations to avoid merely having to react to crisis that can be foreseen, and one of my management goals is to develop mechanisms to try to anticipate and address such areas where possible.

Question 8: What plans do you have to improve on the collection of debts [owed INS on breached security bonds and other penalties] and will you centralize this program?

Answer: A great deal depends on what I find if I am confirmed, however, such breaches of security bonds greatly concern me. If confirmed, I want to explore the greater use of such bonds to reduce the number of detainees. The enforcement of breaches when they do occur should be aggressively pursued.

Responses to Questions Submitted by Senator DeConcini (Con't.)

Question 9: Should there be a reorganization that would divide the Service into two sections, one for service and one side for enforcement?

Answer: As I have said, I have no set preconceptions. Both are co-equal functions of the INS. I will be receptive to considering whatever organization structure that permits INS to fulfill its entire range of responsibilities.

Question 10: Are you aware of this abuse of authority [allegedly using "Border Fleet Replacement" funds as a "Commissioner's Contingency Fund"], and please attempt to address it?

Answer: I have no information on this matter, but I would be pleased to receive and review any specific information which you and other Members of the Committee desire to provide.

Question 11: Do you plan to make Border Patrol an equal partner and provide them with equal representation at INS?

Answer: The interests of all components within the Service will be given my full, equal, and complete attention, including the important enforcement area of the Border Patrol.

Question 12: Do you plan to implement a separate procurement process for the Border Patrol to address this problem [alleged mismanagement in the procurement of Border Patrol interdiction equipment] and how will it be set-up?

Answer: As I mentioned at the hearing, my management experience has taught me to control budgets, personnel and purchasing. All purchasing in the INS must be brought under central control with appropriate procurement guidelines. I believe such controls can be established without unduly restricting efficient operation.

Question 13: If you are confirmed as Commissioner of the INS, do you plan a cost analysis of the Western Regional Center from April, 1988 to the present?

Answer: As I indicated during my hearing, if confirmed, I will consider a cost analysis for all regions, and will specially evaluate any problems at the Western Regional Processing Center.

Responses to Questions Submitted by Senator DeConcini (Con't.)

Question 14: Do you support Regional Centers? Can you offer any evidence that they meet the needs of Arizonans and other state residents? How do you propose to address the "black hole" problem? What assistance, if any, can you offer those people whose documentation has been lost by the INS?

Answer: As I indicated, I am not in a position to comment definitively on this matter. However, the problems of lost documents, unanswered phone calls, undue delays and other constituent service problems deeply concern me and will not be tolerated, if I'm confirmed.

Question 15: If you do support the Regional Centers, do you plan a cost analysis of whether the Regional Centers are more or less efficient, based on tax dollars, than the District Offices? Would you consider moving the processing operations back to the District Centers?

Answer: If confirmed, after the evaluation of the Regional Centers I will do my best to see that every dollar of public funds is spent efficiently.

Question 16: Can you tell me original cost [of the Western Regional Center]? The cost of relocating and retraining employees at the Laguna Niguel facility? The cost of the highly touted new computer system that in fact does not seem to be able to tell anyone anything?

Answer: I am informed by INS that the cost of oprating the San Ysidro Western Service Center for FY 88 (the last year for which figures are currently available) was approximately $1.487 million. The Western Service Center did not move to Laguna Niguel until March 1989.

I have been told by the INS that the cost of moving the Western Service Center from San Ysidro to Laguna Niguel was approximately $30,000. Only one employee opted to transfer, although the Service is liable for several other possible moves later if employees change their plans. Much of the office furniture was not moved. Some of the new furniture was available from the Legalization offices which were closed.

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I am also infomed by INS that positions at the old facility were left vacant and filed at Laguna Niguel. Many officers at the old facility transferred to positions within the San Diego district to avoid moving.

The cost of setting up the original facility cannot be accurately estimated, since furnishing and personnel were added gradually according to INS. The annual rental changes at the old facility were $16.99 per square foot as compared to $12.21 per square foot at Laguna Niguel.

Question 17: What plans do you have to implement the anti-discrimination provisions of the IRCA? Have you any information on the increasing incidents of discrimination based on fear of the effect of employer sanctions?

Answer: I intend to enforce all IRCA provisions as efficiently, effectively and responsibly as possible. And to use the INS outreach and public education programs to get the message to the public that discrimination, of any kind, will not be tolerated. Ongoing communication with and education of employers, I believe, will keep discrimination to a minimum.

Question 18: Do you plan to declare a similar moratorium [against INS raids during the counting of the census] if confirmed as Commissioner?

Answer: As I indicated during my confirmation hearing, I will consider such a moratorium, if I am confirmed as INS Commissioner. I do not want to convey the impression, however, that I would in any way fail to comply with my oath to enforce the laws of the United States.

Question 19: Did INS have any input into the recent welcome decision by the Administration to oppose legislation that would attempt to exclude undocumented persons from the next census?

Answer: I have not been privy to the deliberations on that matter.

Question 20: Could you explain why people have this perception [you are biased against minorities and the poor and the homeless] and why you think it is wrong? Did you restrict indigent access to health services? Did you oppose low-income housing in your county? Did you argue that there were no homeless in your community? Are there? Did you once incite people to disobey a Federal court desegregation order on busing?

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Answer: As I stated at my confirmation hearing, these allegations are not supported by facts. This committee has received more than a dozen letters supporting my nomination from leaders of the Urban League, the Asian Indian community, the Hispanic community, and the Organization of Chinese Americans among others. These are the very people to whom I have allegedly been insensitive in my 25 years of public service. In addition, the St. Louis County public Defender, the Superintendent of the Special School District (for disabled students), and immigration lawyers have supported my nomination.

It is significant that the City of St. Louis and St. Louis County are separate jurisdictions unlike most metropolitan areas where the city is located within the county. One editorial writer of the St. Louis Post-Dispatch raised the charge of insensitivity and this subsequently caused concern with some immigration organizations and provided a vehicle for publicity for a few others. St. Louis County is primarily the suburbs and as such we do have different social problems than the inner city. Nevertheless, I have been sensitive in all of these areas and more. St. Louis County has a homeless shelter, has levied a small fee at the time of marriage applications which yields roughly $100,000 a year for homeless wives, a recent homeless task force report recommended, and I support, a recording fee which would yield $500,000 a year toward meeting homeless needs.

With regard to law income housing, this is a good example of the distortion. St. Louis County has presently 5,500 low income subsidized units. Obviously, I am not against low income housing assistance. This charge is made because 10 years ago HUD declared that it would draw the housing plan for St. Louis County. HUD's philosophy was concentrated new construction. St. Louis County's philosophy was to distribute housing throughout the county so as to avoid the stigma, neon sign, and loss of dignity which goes with concentrated new construction. Congressional intent clearly left the housing plan to local government, but HUD arbitrarily declared that if we didn't follow its dictates, it would withdraw $9 million in community development money from St. Louis County. St. Louis County went to the Federal District Court, made the case, and got a favorable ruling. Today the county's housing units are blended into the community. There has been a helping hand without destroying the dignity of those helped.

With regard to health services, on the night of the hearing St. Louis Mayor Schoemehl and I were given and award by the AMA for creative contribution to the improvement of health and hospital services. The city and county had old and expensive public hospitals. Tremendous amounts of money were wasted on bricks and

Responses to Questions Submitted by Senator DeConcini (Con't.)

mortar and duplication of expensive equipment that could have gone into health care. We closed our public hospitals and merged into a regional hospital which the city and the county own and fund. Regional is a first-class facility and while it is located in the City of St. Louis, is almost on the county line and more convenient to the elderly and indigent who need it than we the old County Hospital which was located in the affluent community of Clayton. The old County Hospital has been sold for $12 million, the proceeds of which will all go into health care and are being used to fund two comprehensive health clinics in north and south county, as well as, satellites throughout the area which greatly enhance our health delivery system and make it far more convenient to the users.

It is also a total distortion that I ever enticed people to disobey any court order. I have been a public defender and a prosecuting attorney and have always maintained a respect for the court and a reverence for the rule of law. As I explained during the hearing, the issue in 1984 was no longer desegregation. The Federal District Court which found no liability on the part of the City of St. Louis was reversed by the 8th Circuit Court of Appeals and instead of being remanded for retrial, the 8th Circuit arbitrarily mandated a desegregation plan to be drawn. The case acted upon by the 8th Circuit included only the City of St. Louis Board of Education. It did not include St. Louis County school districts. Nevertheless, the 8th Circuit was including county districts in its plan and ordered the State Treasurer to pay $100 million out of unappropriated funds to finance the forced busing. The State Treasurer asked the Attorney General for an opinion and he declined; so the Treasurer asked the Governor to appoint independent counsel and the Governor declined. My point was that if the Treasurer refused to pay or protest the payment, the issue would be framed and such a protest was the only way to get the case before the U.S. Supreme Court. It was not a matter of defying a court order, it was a matter of framing an issue, obtaining a review by the Supreme Court and actually standing for the rule of law rather than any disobeyance. Incidentally, the same 8th Circuit mandated a property tax increase to support desegregation in Kansas City which is just now coming to the U.S. Supreme Court. These are legitimate questions of law and not political rhetoric to incite people.

The charge of insensitivity is offensive to me. My government's hiring practices have involved outreach to minorities. I have taken the lead in revitalizing poor black communities, establishing an enterprise zone in one to stabilize and provide jobs. The Special School District which educates 17,000 disabled children is a separate political jurisdiction, but I have been

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active in my support and participation. As a public defender, I represented and fought for 400 indigents accused of felonies, several juveniles and persons who appeared before the Probate Court under mental illness petitions. I spent most of my life working with youth in recreational activities, and as a prosecutor established a Youth Commission to involve young people in the justice system, as well as a Narcotics Commission to cope with the demand and supply of drugs. My 25 years of public service has been spent reaching out to all people with a special concern for the needy.

Question 21: Do you see the job of INS Commissioner as more of a policeman or as that of an Administrator of the agency that facilitates the entrance into the U.S. of immigrants?

Answer: I see it as a balance of the two. I believe my background as a public defender, a prosecutor and as an Administrator have fully prepared me for ensuring that the co-equal law enforcement and service roles of the INS receive my attention and the resources to do the job in a compassionate and caring fashion.

SENATOR DENNIS DeCONCINI

QUESTIONS FOR JUDICIARY HEARING OF GENE McNARY

I HAVE RECENTLY BEEN BRIEFED ON A REPORT THAT WAS PREPARED BY THE JUSTICE DEPARTMENT ON THE IMMIGRATION AND NATURALIZATION SERVICE. THE REPORT IS EXTREMELY CRITICAL OF I.N.S. IT DESCRIBES MAJOR PROBLEMS IN LEADERSHIP AND MANAGEMENT, RESPONSIBILITY AND ACCOUNTING, OVER HIRING, BREAKDOWN OF OPERATIONS, AND DEBT COLLECTION, TO MENTION JUST A FEW. I WOULD TO STRESS FOR THE RECORD THAT THIS REPORT IS NOT CRITICAL OF YOURSELF MR. McNARY, BECAUSE OBVIOUSLY YOU WERE NOT I.N.S. AT THE TIME--THE REPORT COVERS THE PAST 6-12 MONTHS.

1. THERE APPEARS TO BE VERY LITTLE DIRECTION BUT A GREAT DEAL OF CONFUSION, FRUSTRATION, AND MORALE PROBLEMS AT INS. THE WAY I SEE IT MR. McNARY YOU HAVE A MONUMENTAL JOB IN FRONT OF YOU.

--ARE YOU AWARE OF THE 20 PAGE REPORT I HAVE BEEN BRIEFED ON AND HAVE YOU READ THE REPORT?

--COULD YOU BRIEFLY DESCRIBE WHAT STEPS YOU PLAN TO TAKE TO GET THE SITUATION UNDER CONTROL AT INS AND RESTORE DIRECTION TO THIS FINE AGENCY.

2. IT CURRENTLY APPEARS THAT INS FUNCTIONS AS IF IT WERE COMPOSED OF NUMEROUS INDEPENDENT UNITS. OPERATIONS HAVE THE APPEARANCE THAT THEY ARE DECENTRALIZED. THE REGIONS SET THE BUDGETS AND PRIORITIES WITH MINIMAL INPUT FROM CENTRAL OFFICE IN WASHINGTON.

--DO YOU PLAN TO CENTRALIZE OPERATIONS AND BRING BACK CONTROL TO WASHINGTON?

3. I HAVE BEEN TOLD THAT THE ACTING COMMISSIONER AT INS IS PUSHING FOR INS TO RETURN TO A MORE TRADITIONAL ROLE OF ENFORCING THE IMMIGRATION LAWS.

--DO YOU FAVOR SUCH A MOVE AND HOW WOULD THIS EFFECT INS's ROLE IN DRUG ENFORCEMENT AND INTERDICTION OPERATIONS?

4. THE U.S. BORDER PATROL IS THE NUMBER ONE AGENCY ON THE SOUTHWEST BORDER IN THE SEIZURE OF COCAINE AND MARIJUANA. AT THE PRESENT TIME IN ARIZONA DURING NIGHT TIME HOURS THERE IS ONLY ONE PATROL UNIT FOR EVERY 22-MILES OF THE ARIZONA/MEXICO BORDER.

--ARE THERE ANY PLANS TO INCREASE MANPOWER FOR THE BORDER PATROL ALONG THE SOUTHWEST BORDER?

5. IN THE PAST INS HAS HANDLED THE FUNDING OF OPERATION ALLIANCE OUT OF A SPECIAL FUND IN WASHINGTON. DEPENDING ON THE SPECIAL NEEDS OF INS THIS BUDGET HAS FLUCTUATED. ALLIANCE HAS CONTINUED TO IMPROVE ITS ABILITY TO IMPROVE COORDINATION AND COOPERATION BETWEEN FEDERAL, STATE, AND LOCAL LAW ENFORCEMENT AGENCIES. I BELIEVE ALLIANCE WOULD BE MORE EFFECTIVE IF THEY RECEIVED A SET BUDGET EACH YEAR THAT THEY WOULD BE CERTAIN WOULD REMAIN UNCHANGED.

--DO YOU EXPECT TO MAKE CHANGES IN THE CURRENT METHOD OF FUNDING FOR ALLIANCE BY INS AND WHAT WILL THE CHANGES BE?

6. WHAT STEPS HAVE BEEN IMPLEMENTED OR WILL BE IN THE NEAR FUTURE TO PREVENT ANOTHER CENTRAL AMERICAN CRISIS, SUCH AS THAT WHICH OCCURRED IN HARLINGTON, TEXAS IN 1988?

7. CURRENTLY THE INS IS OWED LARGE SUMS OF MONEY ON BREACHED SECURITY BONDS AND OTHER PENALTIES. WITH THE DECENTRALIZATION THAT CURRENTLY EXISTS AT INS EACH REGION HAS ITS OWN SYSTEM FOR RETRIEVING THESE FUNDS.

--WHAT PLANS DO YOU HAVE TO IMPROVE ON THE COLLECTION OF THESE DEBTS AND WILL YOU CENTRALIZE THIS PROGRAM?

8. THE INS IS RESPONSIBLE FOR ENFORCING TITLE 8 OF THE U.S. CODE. WITH THE RECENT DEMAND PLACED ON THE SERVICE WITH REGARDS TO THE 1988 DRUG BILL, DO YOU THINK THERE IS A NEED TO CLARIFY THE PRIMARY MISSION OF THE INS?

--SHOULD THERE BE A REORGANIZATION THAT WOULD DIVIDE THE SERVICE INTO TWO SECTIONS, ONE FOR SERVICE AND ONE SIDE FOR ENFORCEMENT?

QUESTIONS FOR EUGENE MCNARY - NOMINEE FOR COMMISSIONER OF INS

RE: BORDER PATROL

OCTOBER 3, 1989

9. It is my understanding that the past commissioner at INS has continually used BORDER FLEET REPLACEMENT MONEY AS A COMMISSIONER'S CONTINGENCY FUND. This has resulted in increasingly high maintenance costs, a "pursuit" fleet with dangerously high mileage and an inordinate number of breakdowns in remote areas. This has occurred for several years and each year the Border Patrol falls farther behind on the number of vehicles that are replaced in a safe, timely manner.

--Are you aware of this abuse of authority, and please attempt to address it?

10. I believe that INS has not traditionally afforded the top Border Patrol official an appropriate place on the executive staff. As the leading narcotics interdiction enforcement agency on the U.S./Mexico border, input should not be diluted through layers of supervisors having no first hand knowledge of operations, or particular interest in appropriate distribution of resources. This is not in keeping with the intent of the appropriations committees.

--Do you plan to make the Border Patrol an equal partner and provide them with equal representation at INS?

11. A continuing problem at INS has been mismanagement in the procurement of Border Patrol interdiction equipment, e.g., low light level TV cameras, ground sensors, infrared scopes, etc. These puchases and plans are so fragmented that no meaningful progress has been made in these basic but effectiveness enhancement areas in years. Some projects are at an absolute standstill.

--Do you plan to implement a separate procurement process for the Border Patrol to address this problem and how will it be set-up?

QUESTIONS FOR EUGENE MCNARY - NOMINEE FOR COMMISSIONER OF INS

RE: WESTERN REGIONAL CENTER

OCTOBER 3, 1989

12. Mr. McNary, I would like to focus on an issue that is of the utmost concern to myself, my constituents, and my home state of Arizona. As I am sure you are aware, in April of 1988 the INS consolidated its district offices into regional centers. Prior to this time, Arizona residents were served by the district office in Phoenix. The new regional office was located in San Ysidro, California, serving Arizona, California, Nevada and Hawaii. The INS claimed that this new center would increase efficiency in handling petitions. From the beginning, my staff in Arizona voiced concern over the lack of public telephone lines and a computer system that did not include log-in of petitions and other forms to allow tracking or retrieval of files for corrections or additions. My staff was told that telephone calls from the public would be "interruptions" in an otherwise fast, accurate and efficient system which would better serve Arizona residents. My staff was also told that Arizona residents could expect a 60 day turnaround for processing petitions.

Mr. McNary, I am also sure that you are aware that the INS subsequently decided to move the center from San Ysidro to Laguna Niguel, California. Initially this move caused downtime due to moving and unpacking. But even worse, my staff was told that Laguna Niguel was too expensive a place to live for INS personnel, and that further delays could be expected while these employees were replaced and the new employees trained.

Mr. McNary, the net result of this so-called "streamlining" of INS processing is that Arizona residents have suffered undue hardship. The promised 60 day turnaround soon turned into four months, then six months, and in many instances up to eight months. The cost of these delays in human terms in extreme. When an Arizona resident wants his wife to join him from the Phillipines, and the INS takes six to eight months to perform a simple routine process that involves adjudicating a form, an American birth certificate, and a marriage certificate, the cost is not only precious savings to support two households and long-distance phone calls, but personal pain and suffering. One Arizona resident had a wife in the People's Republic of China. He filed a petition with the INS, but in the six months it took to process, the Tienneman Square massacre occurred and his wife is now unable to leave China due to the government crack-down. This situation is completely unacceptable.

Additionally, the regional center has become what some Arizona residents call a "black hole". Although its new computer system was touted as increasing efficiency, the failure to log-in petitions has resulted in the loss of original naturalization papers, passports and irreplaceable family documents. Petitions go in, but in many cases never come out.

Finally, when it became clear that the regional center was failing to meet the needs of Arizona residents, The INS came up with an alternative. My constituents were told that if they had not gotten a decision after six months, their files would be considered lost or unable to be located, and the INS would allow them to file duplicate applications at the District Office. Unfortunately, those families who had filed with original and irreplaceable papers were often out of luck. Again, a completely unacceptable situation.

Mr. McNary, based on the appalling experience of residents in my home state of Arizona, I would like to ask the following questions:

Q) If you are confirmed as Commissioner of the INS, do you plan a cost analysis of the Western Regional Center from April, 1988 to the present?

b) Do you support the regional centers? Can you offer any evidence that they meet the needs of Arizonans and other state residents? How do you propose to address the "black hole" problem? What assistance, if any, can you offer those people whose documentation has been lost by the INS?

c) If you do support the regional centers, do you plan a cost analysis of whether the regional centers are more or less efficient, based on tax dollars spent, than the district offices? Would you consider moving the processing operations back to the district centers?

d) I am particularly interested in the cost that taxpayers have had to bear for the Western Regional Center. Can you tell me a) the original cost? b) the cost of relocating and retraining employees at the Laguna Niguel facility? and c) the cost of the highly touted new computer system that in fact does not seem to be able to tell anyone anything?

QUESTIONS FOR GENE McNARY
FROM SENATOR DENNIS DeCONCINI
OCTOBER 3, 1989

13. In 1980, then INS Commissioner Lionel Castillo declared a moratorium on INS raids and apprehensions within the U.S. so that all residents would feel free to come forward and be counted during the census. Do you plan to declare a similar moratorium if confirmed as Commissioner?

Did INS have any input into the recent welcome decision by the administration to oppose legislation that would attempt to exclude undocumented persons from the next census?

14. What plans do you have to implement the anti-discrimination provisions of IRCA? Have you any information on increasing incidents of discrimination based on fear of the effect of employer sanctions?

15. As I am sure you are well aware, your nomination has created some amount of controversy in St. Louis based on your service as County Executive of St. Louis County. The St. Louis Post-Dispatch has editorialized against your nomination twice. The basis for such criticism seems to be a perception of a bias against minorities and the poor and homeless. Could you explain why people have this perception and why you think it is wrong? Did you restrict indigent access to health services?

Did you oppose low-income housing in your county? Did you argue that there were no homeless in your community? Are there? Did you once incite people to disobey Federal court desegregation orders on busing?

16. Do you see the job of INS Commissioner as more of a policeman or as that of an Administrator of the agency that facilitate the entrance into the U.S. of immigrants?

RESPONSES OF GENE MCNARY TO QUESTIONS SUBMITTED BY SENATOR SIMON

(Original Questions Attached For Your Convenience)

Question 1: What management steps would you take to address the backlogs [of asylum cases]?

Answer: I do not have any specifics in mind, but such backlogs concern me, as well as many other, and ought to be addressed as quickly and effectively as possible. Additional training of INS adjudicating officers may be one method for addressing this problem. The training of police officers while I was county prosecutor is a program of which I am very proud. I believe, if confirmed, I could bring that experience to bear in resolving this problem.

Question 2: What would you do to improve the training of asylum officers? Over the long term, what steps ought to be taken to make the system work both efficiently and fairly?

Answer: Again, at this point in time, I am not in a position to delineate the specific measures I would take in addressing this concern. I do believe, however, that training is the cornerstone to any effective system of adjudication and if confirmed, I will stress it heavily, as I did as County Prosecutor for police officers.

We must bring a willingness to review and improve the asylum system. For example, I would explore the increased utilization of paralegals, plus increased and revised training curriculum. As prosecuting attorney we published handbooks which were well received, in addition to a monthly newsletter on new rulings and improved techniques. As a County Executive, I pushed for and finally succeeded in building a police training academy. Effective training and improved professionalism will provide extensive dividends in the way the INS performs, the way its employees feel about themselves, and ultimately the way the public perceives the agency.

Question 3: What can you do to make naturalization a higher priority within the Immigration Service in terms of budget, personnel, and overall INS public presence?

Answer: I believe that naturalization is the most basic piece of the American Dream to an immigrant and they should be encouraged to avail themselves of that opportunity. I will evaluate carefully the budgetary needs and requirements to carry this role out effectively.

Improved working relationship with the many community organizations, I believe, will result in the encouragement of any permanent residents to apply for naturalization.

Question 4: Will you use these community resources [community agencies] in a more effective way than they are presently [being used] in naturalization outreach?

Answer: As I stated during my confirmation hearing, if confirmed, I intend to seek out and solicit the input of these groups and will welcome any and all of their suggestions. Evaluation and support from community agencies closes to the people affected by INS actions can play an important and essential role in building trust and understanding.

Post-Hearing Question from Senator Simon to Mr. McNary

ASYLUM ISSUES

Backlogs of asylum cases in which people seek immigration protection while they are in the United States instead of applying outside the country have reached intolerably high levels in some parts of the country. What management steps would you take to address the backlogs?

The backlog problem is not simply one of faster adjudication. Interim regulations regarding asylum have guided the program since 1980 and several attempts to update them have had problems of one kind or another. What would you do to improve the training of asylum officers? Over the long term, what steps ought to be taken to make the system work both efficiently and fairly?

Post-Hearing Question from Senator Simon to Mr. McNary

NATURALIZATION

The three letters of INS stand for Immigration, Naturalization and Service. In its FY89 budget submission, the INS identified Adjudication and Naturalization as its number 3 priority. In this year's budget request, however, Adjudication and Naturalization fell to seventh priority.

Among the areas for improvement that have been identified in the naturalization process are outreach to potential applicants; access to and number of citizenship classes that help prepare applicants for the INS examination; and overly complex forms and instructions. I am also concerned about the long waiting time for naturalization applications in Houston (over 12 months); Miami (10 months); and Los Angeles (6 months).

What can you do to make naturalization a higher priority within the Immigration Service in terms of budget, personnel, and overall INS public presence?

During the legalization program, the community agencies provided an effective bridge between Service personnel and the public. Will you use these community resources in a more effective way than they are presently in naturalization outreach?

Post-Hearing Question from Senator Simon to Mr. McNary

ASYLUM ISSUES

Backlogs of asylum cases in which people seek immigration protection while they are in the United States instead of applying outside the country have reached intolerably high levels in some parts of the country. What management steps would you take to address the backlogs?

The backlog problem is not simply one of faster adjudication. Interim regulations regarding asylum have guided the program since 1980 and several attempts to update them have had problems of one kind or another. What would you do to improve the training of asylum officers? Over the long term, what steps ought to be taken to make the system work both efficiently and fairly?

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James H. Buford
President

A United Way Member

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August 30, 1989

The Honorable Joseph R. Biden, Jr.
U.S. Senate
221 Russell Building
Washington, D.C. 20515

Dear Senator Biden:

This communication is written as a recommendation for Gene McNary for the position of Director of the United States Immigration and Naturalization Service.

I have worked with Gene McNary since 1981 in two capacities; as Director of Jobs for Missouri Graduates, Inc. for Governor Christopher S. Bond and in my present position as President, Chief Executive Officer of the Urban League of Metropolitan St. Louis. I have found Mr. McNary to be a man of integrity who is sensitive to the needs of all his constituents, including minorities.

In both my positions I deal with the poor and disadvantaged of the community. In every instance, bar none, Mr. McNary was sensitive to my request and followed through with needed services.

The Urban ~~League of~~ Metropolitan St.Louis services a county constituency that is Black and depressed. With the help of Mr. McNary, at the Urban League's request, we have built new housing in depressed areas; converted an old library into a day care center; relocated the poor in new housing; and, created a health clinic to meet their health needs.

Mr. McNary has appointed many Blacks to positions of authority in the county as well as important committees and councils. He has an open door policy for Black leadership in this community and I feel he will make an excellent Director.

Respectfully,

James H. Buford
James H. Buford
President, CEO

✓ 9/20/89

JHB/am

"Equalizing Life Chances for All People"
All contributions to the Urban League are tax deductible.

SEP - 7

WILLIAM J. SHAW
PUBLIC DEFENDER

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OFFICE OF THE PUBLIC DEFENDER
TWENTY-FIRST JUDICIAL CIRCUIT
ST. LOUIS COUNTY COURTHOUSE
CLAYTON, MISSOURI 63105

September 6, 1989

The Honorable Joseph R. Biden, Jr.
United States Senate
221 Russell Building
Washington, D.C. 20515

Dear Senator Biden:

I was recently amazed to learn that a few isolated voices were being raised to the effect that Gene McNary has evidenced no concern for the poor and minorities. I find such accusations to be a flagrant misrepresentation of the facts and find them totally unfair to Mr. McNary.

While I have been a lifelong Democrat with what I consider an extremely liberal philosophy, and while Mr. McNary has been a conservative Republican, I feel that I must set the record straight as far as his concern for minorities and for the poor. It should be borne in mind that he has been the Executive of an extremely well to do county and has not been presented with issues concerning the poor which are presented to a majority of executive officers.

I have known Mr. McNary for some twenty-six (26) years, during which time I have been the Public Defender for St. Louis County. Mr. McNary worked for me as an assistant for some two and a half years. Gene has always and continues to show great concern for the rights of the poor and the downtrodden. The clientele that he represented in my office were totally indigent and he defended them in their cases with every ounce of zeal that it was possible for any attorney to exert.

I feel that the President has made an excellent choice in selecting him for the important position of Commissioner of the Immigration and Naturalization Service and wholeheartedly support his nomination.

If there is any further information I can provide to you on this matter, I will be more than happy to do so.

Yours very truly,

William J. Shaw
Circuit Public Defender

WJS:dd

INTERNATIONAL BROTHERHOOD OF TEAMSTERS
CHAUFFEURS • WAREHOUSEMEN & HELPERS
OF AMERICA
25 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001

September 1, 1989

Senator Joseph R. Biden
Chairman, Senate Judiciary Committee
489 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Biden:

This letter is being written in reference to the confirmation hearing of Gene McNary for Director of the United States Immigration Services. I write in favor of his confirmation.

As a St. Louisan who has been involved heavily in community and political service, I have come to know Gene on a very personal and professional basis.

In my capacity as President of the St. Louis Community College and a Board member for nine years, I have found Gene McNary to be a staunch supporter of human development and accessability of the education process for not only the wealthy, but the severely strapped black underclass in the St. Louis community.

As a member of the Board of Directors of Jobs Partnership and Training Consortium for St. Louis County, I have seen the dedication and professionalism of his staff. This speaks, I am sure, of his good judgement and philosophy in choosing staff.

As a member of the St. Louis City - County Board of Freeholders, a group of appointed "civic" leaders who were charged with reshaping the St. Louis area for its' future viability, McNary's forthright and stand-up leadership was impressive.

I do not mean to imply that I have always agreed with Gene. I am a lifelong democrat.

The area from which he is elected is predominantly democratic, yet he has been elected overwhelmingly time after time. The reason for this, I believe, is that although you may disagree with Gene, no one that I know would question his integrity or his determination to follow through on what he thinks is best for St. Louis county, his constituency.

✓ 9/26/89

As a black in the St. Louis community, I have noticed the hiring practices and policies toward minorities in the county government have been exemplary. Again, this, I would think, is indicative of Gene McNary's personal and professional philosophy, intergrity and compassion. I have no doubt that he would give the same

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OF AMERICA
25 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001

service to our country and the clients of the Immigration Services.

Sincerely,

Claude Brown
D.R.I.V.E. Coordinator
International Brotherhood of Teamsters

CB:vts

RIS-STOWE STATE COLLEGE

CE OF THE PRESIDENT

3026 LACLEDE AVENUE
ST. LOUIS, MISSOURI 63103
314-533-3366

August 28, 1989

The Honorable Joseph R. Biden, Jr.
United States Senate
221 Russell Building
Washington, D.C. 20510

Dear Senator Biden:

I am pleased to write you concerning the nomination of Gene McNary for the position of Commissioner of the Immigration and Naturalization Service.

I was born and raised in St. Louis and I have lived and worked in Missouri all my life. As a long time resident of Missouri and the President of Harris-Stowe State College, I am well aware of his leadership abilities and his administrative expertise. St. Louis County has grown and prospered under his administration.

Because of his strong administrative skills and record, I recommend to the Committee that he be given favorable consideration for this important position.

Sincerely yours,

Henry Givens, Jr.
President

HG:fl

September 5, 1989

The Honorable Joseph R. Biden, Jr.
United States Senate
221 Russell Building
Washington, DC 20510

Dear Senator Biden:

This letter comes to you by way of support for St. Louis County Executive Gene McNary to be Commissioner of the Immigration and Naturalization Service.

In my position as Senior Vice President and currently Senior Advisor to the United Way of Greater St. Louis, Mr. McNary appointed me to the very sensitive post of "commissioner" to the St. Louis County Housing Authority. I've had the pleasure of serving in this capacity for the past six years.

As a member of the minority community, and a registered democrat, I can speak with conviction that Mr. McNary has been fair and understanding in dealing with the problems and concerns of the minorities in the St. Louis Area.

In the area of public housing, he has reached out for counsel and advice. He has displayed a willingness to utilize local Urban League services and staff when confronted with sensitive issues affecting the minority community.

Senator Biden, I am pleased President Bush has nominated Gene McNary for this post. Without reservation, I am happy to endorse his appointment.

Sincerely,

Tarpley

Walter R. Tarpley
Senior Advisor
United Way of Greater St. Louis

WRT:d

bcc: Gene McNary
John Callen
Martin B. Covitz

Anthony B. Ramirez
Attorney at Law
Shell Building
1221 Locust, Suite 1000
St. Louis, Missouri 63103

314/621-5237

September 18, 1989

Honorable Joseph R. Biden, Jr.
U.S. Senate
221 Russell Building
Washington, D.C. 20510

RE: Gene McNary

Dear Senator Biden:

In re the above, I am privileged to have this opportunity to support the candidacy of Mr. McNary as the Commissioner of the U.S. Immigration and Naturalization Service.

Although Mr. McNary is not a personal friend of mine, he is an acquaintance, politically and civicly.

I have been involved deeply with the Hispanic Community in St. Louis, chiefly with the Hispanic Chamber of Commerce, Image, and the Hispanic Leaders Group.

With the Hispanic Chamber, I have been the Chairman for the years 1983 through 1986 and for 1988, and was President for the years 1982 through 1985, and have held other posts.

Although not an officer in Image, I have been active with the group.

In the Hispanic Leaders Group, I have been the Facilitator for a number of years since this group has no officers.

At present, I hold no elective office in any of the above groups.

Also, in the past, I have shared the stage and/or ideas with nationally known Hispanic elected officials, and officers of Hispanic national organizations.

To my knowledge, Mr. McNary does not have a large Hispanic constituency. However, to his credit, Mr. McNary has, in the past, made himself and his office available for the gathering of locally prominent Hispanic individuals for the signing of proclamations announcing the celebration of Hispanic Heritage Week/Month.

Also, when Mr. McNary was invited to address the Hispanic Leaders group several years ago, at a time he was running for statewide office, only he and one other candidate personally appeared to discuss matters of concern with us. It is my recollection that invitations were sent to approximately eight candidates.

Additionally, I think that Mr. McNary has been an excellent administrator and a consistent advocate for his constituency in St. Louis County.

Naturally, if you have any questions, I will be more than happy to expand on the contents of this letter. Incidently, Mr. McNary did not solicit this letter, but did give your name and address when I contacted him.

I remain

Respectfully yours,

ANTHONY B. RAMIREZ, P.C.

By: Anthony B. Ramirez
Anthony B. Ramirez

ABR:bp

The Association of Indians in America, Inc.

A Non-Profit Organization of Asian Indians
Founded in 1967

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Immediate Past President
Surendra K. Saxena
(Illinois)

September 7, 1989

The Honorable Joseph R. Biden, Jr.
United States Senate
221 Russell Building
Washington, D.C. 20510

Dear Senator Biden:

I would like to make known to you and your committee my support and endorsement of St. Louis County Executiv Gene McNary as Commissioner of the Immigration and Naturalization Service. I feel strongly, from my personal acquaintance with Mr. McNary, that he would be a capable, responsible and sensitive Commissioner and that he merits confirmation.

I beg your indulgence to briefly introduce myself. I am the Chief of Urology at St. Anthony's Medical Center in St. Louis County and Assistant Clinical Professor of Urology at St. Louis University. I am a naturalized citizen of the United States and have been in this country since 1971. I have taken an active and leadership role in professional and civic activities. I am the President of the Association of Indians in America. This is a national organization of Asian Indian Americans, founded in 1967 with chapters in most states. I have been a member of National Advisory Council for South Asian affairs since 1985. This Council is a public interest foreign policy program of Americans of South Asian heritage, founded in 1979 to interface with the United States Department of State, Bureau of South Asian Affairs. I was appointed to the Census Advisory Committee for Asian and Pacific Islander populations by Secretary of Commerce Verity and am serving since 1987. This statutory advisory committee works regularly with the Bureau of Census to ensure the best enumeration of Asian and Pacific Islander populations for the 1990 census.

✓ 9/2/89

1511 K Street, N.W. • Washington, D.C. 20005 • (202) 393-0214 - Suite 740

The Association of Indians in America, Inc.

A Non-Profit Organization of Asian Indians
Founded in 1967

Mr. McNary has a distinguished career of public service. As County Executive he has successfully reached out to all citizens including people like us who have immigrated from India and Asian countries. Asian immigration is a fast growing phenomena and I sincerely believe Mr. McNary as Immigration and Naturalization Service Commissioner will bring to the job a thorough and careful understanding of issues that affect new immigrants. I have met with Mr. McNary on a number of matters over the past 15 years and have found him to be responsive and concerned with the problems and concerns of all persons and groups. He has always been available our group and has worked with us to resolve matters that concern us. From the perspective of a citizen of Asian-Indian descent, I am confident he will deal fairly and sensitively with all who are affected by the Immigration Law.

He also has displayed consistently the type of leadership and administrative ability needed to serve effectively as Commissioner of this highly important agency.

I respectfully urge Mr. McNary's confirmation as Commissioner of the Immigration and Naturalization Service.

Sincerely,

Jitendra P. Shah

Jitendra P. Shah, M.D., F.A.C.S.

10004 Kennerly, Suite 360
St. Louis, MO 63128
Office 314-849-2735
Home 314-576-4215

1511 K Street, N.W. • Washington, D.C. 20005 • (202) 393-0214

SEP 29

St. Louis Regional
Medical Center
5535 Delmar Boulevard
St. Louis, Missouri 63112
Telephone (314) 361-1212
Robert B. Johnson
Chief Executive Officer

September 27, 1989

Honorable Joseph R. Biden, Jr.
U.S. Senate
221 Russell Building
Washington, D.C. 20510

Dear Senator Biden:

I am pleased to write this letter in support of County Executive Gene McNary's nomination for the position of Commissioner of Immigration and Naturalization Service.

For the last three and one half years, I have had the opportunity to serve as the President and Chief Executive Officer of the St. Louis Regional Health Care Corporation which was formed in the summer of 1985, due to the support and encouragement of Mayor Vincent Schoemehl, City of St. Louis and County Executive, Gene McNary, St. Louis County.

I was selected to head this organization and started approximately eight months after the organization was established. However, I have had an opportunity over the last three and one half years to assist in implementing this very important effort in local government cooperation, regionalization of health care services and the establishment of a coordinated health care system for the medically indigent of the St. Louis community.

I believe it is a fair assessment that decisions made by County Executive McNary and Mayor Schoemehl in 1985 were both visionary and politically courageous. Both chief executive officers recognized that they could, by supporting the establishment of the St. Louis Regional Health Care Corporation, improve the delivery of health care services to the medically indigent of their respective jurisdictions while achieving some economies of scale. As you can imagine, this was a controversial decision. I believe the results in the past four years have vindicated the judgment made by Gene McNary and Vince Schoemehl.

I will briefly describe the St. Louis Regional Health Care Corporation, and give you a summary of some of the highlights of accomplishments that we've had under this organizational structure.

The St. Louis Regional Health Care Corporation is a private, not-for-profit corporation that operates the St. Louis Regional Medical Center which is a 300 bed general acute care hospital, along with four, city-owned primary clinics, a Professional Services Senator

Providing Quality Medical and Health Care Services.
Owned and Operated by a Not For Profit Corporation.

Corporation, specialty clinics and a home care program. The organization is governed by a 15 member board of directors, seven of whom are nominated by the Mayor and seven of whom are nominated by the County Executive. The two chief executive officers jointly nominate the Chairman of the Board.

The St. Louis Regional Health Care Corporation contracts with the City of St. Louis and St. Louis County for the provision of care to the medically indigent of these two jurisdictions and is reimbursed on a proportional basis. The two jurisdictions equally share the cost of debt service for the purchase of this facility. Currently, approximately 80% of the patients who utilize the hospital are city residents and 20% are county residents.

St. Louis Regional Health Care Corporation provides a great deal of services to the citizens of this community. We presently admit approximately 11,500 patients a year, provide 3,400 deliveries a year, see approximately 58,000 patients in the emergency room, provide 165,000 primary clinic visits, provide approximately 42,000 specialty clinic visits, and provide slightly more than 13,000 home care visits annually.

Let me just briefly highlight some of the accomplishments of the organization in the last four years:

- We have increased collections by approximately $24 million. We collected $15 million the first year and collected $39 million in Fiscal Year 1989.
- Last Fiscal Year (FY 1989) we realized a $3 million net excess of collections over expenses.
- In Fiscal Year 1988, which is the last audited fiscal year, we achieved an unqualified opinion from the public accounting firm of Peat Marwick.
- We have had an active expense reduction program that resulted in reduction of over a million and one half dollars in expenses in Fiscal Year 1988 without impairing the quality of service or access to health care service. During the last two fiscal years we have averaged an increase in expenses of less than 3% per year and have budgeted an increase in Fiscal Year 1990 of only 3%.
- In the spring of 1986 we began construction of the new obstetrical unit which was completed in the spring of 1987 within the planned $3.2 million budget.

- o We initially forecasted providing 3,000 deliveries a years. We are now providing in access of 3,400 deliveries annually.
- o Under the leadership of the board of directors we established a five year long range strategic plan in November 1987. A recent assessment of the status of the long range plan showed that substantial progress has been made on all the goals and objectives established in that plan.
- o With the support of the county and the city we are about to launch the construction of a new 22,000 square feet emergency care center to replace our current 14,000 square feet emergency room.

The above is just a brief summary of some of the accomplishments of this organization during the last four years. I have included with my letter a copy of our most recent annual report which further highlights some of the accomplishments of this organization. I believe that we have reached a point in this community where St. Louis Regional Medical Center and its Clinics are a respected part of the health care system providing quality care to a large segment of the medically indigent population. County Executive Gene McNary and Mayor Vincent Schoemehl can be justifiably proud of this organization and pleased with their decision to demonstrate vision and courage when they undertook the creation of this organization four years ago.

I am pleased to have had the opportunity to provide you with this letter of support.

Best wishes.

Sincerely,

Robert B. Johnson
President and Chief
Executive Officer

RBJ/bl

cc: County Executive Gene McNary ✓

Enclosure

MOVEMENT FOR A FREE PHILIPPINES

International President
HON RAUL S. MANGLAPUS
SECRETARY OF FOREIGN AFFAIRS
Department of Foreign Affairs
PICC Building
Manila, Philippines

General Chairman
ARTURO M. YACA, M.D.
977 Cabernet Drive
Town and Country, Missouri, 63017
(314) 394-7991

Executive Director
WILFRIDO CRUCILLO
235 E. 40th Street
New York, New York 10016
(212) 983-0733

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BILL SANTILLAN, M.D.
RAMON SOLEVILLA
ENRIQUE VILLALON, M.D.
PERFECTO YASAY, ESQ.

September 14, 1989

The Honorable Joseph R. Biden, Jr.
Chairman, Senate Judiciary Committee
United States Senate
221 Russell Building
Washington, D.C., 20510

Dear Senator Biden:

The County Executive of St. Louis county, Missouri, the Honorable Gene McNary, has recently been nominated by President George Bush to head the Immigration and Naturalization Service. The residents of this premier county of our great state of Missouri welcome our county executive's appointment and look forward to a prompt and unanimous confirmation from the Senate Judiciary Committee.

As a member of an ethnic minority group in this country, and having directly benefited from your government's benevolence by being granted a refugee status sometime in the past, I have acquired a considerable degree of insight into this federal agency and the immigrations laws it is mandated to uphold. Our Movement for a Free Philippines, the earliest anti-Marcos organization based in the United States, is composed of refugees from the Marcos dictatorship, Pilipino immigrants and Americans who shared a common goal and commitment towards freedom and liberty for our old country. Our group's founder, a former exile and Philippine senator, is the present foreign affairs minister of the Philippine government, Honorable Raul S. Manglapus. And because of these, I feel I am in a unique but better position than those from other single issue interests to speak out on Mr. McNary's

9/27/89

appointment. Moreover, I have been a resident of the county of St. Louis since the start of his administration in the county.

Through all the years of his many terms, our county has experienced a period of unprecedented growth in population, standard of living and municipal services. These are largely attributable to Mr. McNary's very capable management of the county government. Despite the fact that the different ethnic minorities constitute a small fraction of the county populace, their interests and welfare have never been ignored during his administration. In the area of health care delivery, Mr. McNary has ensured that those disadvantaged segments have full access to adequate health care through a network of public health clinics strategically situated in areas where these are most needed. For a time, his administration had ran a full service public hospital until hospital care delivery in the region was merged into a single non-profit entity with that of the city of St. Louis. Even then, with this merger, dictated mainly by economics, Mr. McNary remained vigilant in ensuring that the health care needs of the county residents are not jeopardized. He had appointed numerous minority health care professionals in the county's public health system and for a number of times his top county medical officers were ethnic minorities like Dr. William Banton, a prominent black physician and Everard Rutledge, a very capable health care administrator. Mr. McNary, contrary to claims of certain regional interest groups, has consistently shown a remarkable degree of sensitivity to the disadvantaged and minority groups. Even in other areas of county administration, he has consistently shown fairness, impartiality and even-handedness in dealing with the entire racial spectrum in our county, a very admirable quality indeed for an executive of a county with an overwhelmingly white constituency.

Through all the years of his administration, he had never been touched by any scandal nor had fallen into disrepute, always exercising his authority and taking bold initiatives with only the interests of the county and the residents in mind. He possesses that ability to identify and draw top-notch professionals into his administration that could be aptly characterized as one of the most efficient county government operations in our state, given its population size.

His very considerable administrative experience, together with his legal background, are just some of the many factors that your committee must consider. With these, I am certain that he will assume the stewardship of a very critical agency of the federal government with the necessary tools and knowledge that will surely impact on a very positive manner upon the Immigration and Naturalization Service.

Certain immigrant minority interests groups have began voicing concerns regarding Mr. McNary's appointment and being an immigrant myself I can empathize with them. They decry Mr. McNary's lack of experience in the field of immigration, adding that he is of unknown quality. Their concerns, I believe, are misplaced. Mr McNary will not, I am sure, allow his own personal views, to which he has the right to keep and maintain, to unduly influence his official conduct nor allow these to be a factor in performing his duties as Immigration Commissioner and enforcing the immigration laws of the United States. And I am confident that Mr. McNary is cognizant of the fact, a fact that seems to escape from certain misguided elements among the immigrant communities in United States, that this nation's immigration laws that Mr. McNary will soon enforce, were designed not for the primary benefit of this nation's immigrants nor their relatives and friends from their old countries, but for the common interest and welfare of the entire American populace, native-born or otherwise.

Some self-proclaimed advocates for the county's homeless have expressed their opposition to Mr. McNary's appointment due to his alleged insensitivity to the plight of this poor underclass. Having resided in the county of St. Louis for the last sixteen years in four different areas of the county, I have yet to see considerable numbers of these unfortunate dispossessed elements in any area of the county to the extent that I have seen in other metropolitan areas and I do not consider myself blind or naive. And if there are, I am sure that our county government has in place social services and other relief agencies that can adequately address the needs of the homeless. In any case, I see no connection whatsoever between our county's homeless and Mr. McNary's abilities and qualifications in assuming the stewardship of the Immigration and Naturalization Service.

I have my own share of experiences in dealing with the INS. For a time, I felt that I was being raked through the coals, figuratively speaking, when my application for asylum was under process. Each time I had to present myself to the local INS agency during the long and arduous process, I was literally shaking with trepidation. I hated every moment of it. But keenly aware that I am begging for a measure of benevolence from this country, to be given refuge from the political torment in my old country, I had no choice. Nonetheless, I remain very appreciative and grateful to this country for providing relief to me and my family from further political persecution and allowing those of us to continue with our anti-dictatorship resistance from these shores. Knowing Mr. McNary, with his compassion and fairness, I am sure he will continue with the noble tradition of humanitarian relief by providing comfort and refuge to those who yearn to be free.

Very respectfully yours,

Arturo M. Taca, M.D.
General Chairman
MOVEMENT FOR A FREE PHILIPPINES
977 Cabernet Drive
Town and Country, MO., 63017
(314)394-7991
(314)361-4888
(618)451-1466

NEW ORLEANS PUBLIC SCHOOLS

4100 TOURO STREET ■ NEW ORLEANS, LOUISIANA 70122

EVERETT J. WILLIAMS
Superintendent

SAMUEL A. SCARNATO
Associate Superintendent
Business and Finance
(504) 286-2731

Automatic Telecopier
(504) 286-2780

September 28, 1989

The Honorable Joseph R. Biden, Jr.
United States Senate
221 Russell Building
Washington, D. C. 20510

Dear Senator Biden:

I am writing to express my support for the nomination of St. Louis County Executive Gene McNary to be Commissioner of Immigration and Naturalization Services. I had the honor and privilege of working with Mr. McNary from 1983 to 1986 when I served as Superintendent of Schools for the St. Louis County Special School District. The Special School District is a county-wide school system which provides educational and support services to more than 18,000 handicapped students. This public school system has been in existence for 32 years and is nationally known for its outstanding programs for the handicapped.

During my years as superintendent, Mr. McNary demonstrated a strong and untiring commitment to the needs of handicapped students. He frequently volunteered his time to interact with special needs students, willingly participated in student special events, and often lent the support of his office and staff for educational activities for these students. His interaction with these many special students was testament to his care and understanding of individual differences.

Mr. McNary's sensitivity to the needs of our students was further evidenced when he became chairman of the district's 1986 tax levy campaign. The tax levy initiative was necessary because severe financial constraints threatened the delivery of services to handicapped students throughout the county. Mr. McNary was in every way a working chairman. He personally generated the support of the business community, spoke publicly to organizations about the critical educational needs of disabled students, and stood on a street corner with district parents selling carnations to raise money to fund the tax levy campaign. Due to Mr. McNary's leadership and efforts, the tax levy succeeded and financial stability was restored to the district.

In my three year association with Gene McNary, I saw a man who demonstrates great appreciation of individual differences and a sensitivity, empathy, and commitment to disabled persons. These qualities coupled with his leadership abilities and his dedication to those whose abilities might be limited are unique attributes. Such attributes will prove invaluable in the position of Commissioner of Immigration and Naturalization Services.

Mr. McNary is a dedicated, sensitive leader. St. Louis County and its 18,000 disabled students have greatly benefited from his service and contributions.

Sincerely,

Samuel Scarnato

Samuel Scarnato
Associate Superintendent
Business and Finance

✓ 9/28/89

SS/md

1110 North Glebe Road
Suite 200
Arlington, Virginia 22201
Phone (703) 243-6500
Cable Address IACPOLICE

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Police Department
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Colorado State Patrol
Denver, CO

Division of State Associations
of Chiefs of Police
General Chairman
Eugene Shaw
Chief of Police
Town of Brighton
Police Department
Rochester, NY

Past President and
Parliamentarian
Francis B. Looney
Farmingdale, NY

September 11, 1989

The President
The White House
Washington, D.C.

Dear Mr. President:

On behalf of the International Association of Chiefs of Police and as a Chief of Police, I would like to express my support for Mr. Gene McNary to the position of Commissioner of Immigration and Naturalization Service. I feel Mr. McNary's appointment to this position would assist law enforcement as he is dedicated to improving law enforcement, and has advanced our efforts in fighting crime.

Your consideration of Mr. McNary is appreciated. I also want to thank you for your personal attention to the drug problem in our nation. Your concerns are shared by all of us, and we encourage your active interest in this growing problem.

Sincerely,

Charles A. Gruber

Charles A. Gruber
Chief of Police

CAG/ld

cc: Charles D. Reynolds, President
Dan Rosenblatt, Executive Director
G. H. Kleinknecht, Treasurer

✓ 9-22-89

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10/4

NEWS RELEASE

FOR IMMEDIATE RELEASE
3 OCTOBER 1989
CONTACT: MELINDA YEE (202) 223-5500

OCA ENDORSES INS COMMISSIONER-DESIGNATE MCNARY - PRESENTS RECOMMENDATIONS TO INS AT SENATE HEARING

WASHINGTON--Today, before the Senate Judiciary Committee, OCA endorsed Mr. Gene McNary as Commissioner of the Immigration and Naturalization Service (INS). Executive Director Melinda Yee testified on behalf of OCA.

OCA's support for Mr. McNary was due in large part to the strong endorsement of the OCA St. Louis Chapter, the recipient of the Best Chapter Award of 1989. The St. Louis Chapter has worked closely with Mr. McNary while he served as Executive of St. Louis County. He has been responsive and attentive to the local Chinese American community. OCA believes that Mr. McNary's background and previous experience has provided him with appropriate administrative skills to provide proper leadership to the INS. Upon confirmation, OCA looks forward to a close and productive working relationship with Mr. McNary and the INS.

National President Frank Liu stated, "I have complete confidence in the judgment of the OCA St. Louis Chapter, therefore, I strongly support Mr. McNary's nomination."

In its testimony, OCA offered the following recommendations to improve the "status and goodwill between the INS and the Asian Pacific American community."

1) Create open dialogue between the Asian Pacific American community and the INS.

2) Employ Asian Pacific Americans to high level staff positions.

3) Design a comprehensive educational program which includes employing more multi-lingual staff, creating more multi-lingual material, and developing more outreach.

4) Establish quality-control procedures and rules for INS enforcement practices.

5) Develop clear policy with the Presidential Administration on legal immigration reform.

Mr McNary is expected to be confirmed by the Senate later this month.

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REPRINT OF OFFICIAL LETTER FROM OCA ST LOUIS

TO: Frank Liu, President OCA National 1989 26 Sept. 1989
Melinda Yee, Executive Director, OCA National 1989
FR: T.C. Peng, Acting President, OCA-St. Louis, September, 1989.
SU: OCA-St. Louis Support for Gene McNary, the Nominee for Chief, Immigration and Naturalization Service.

OCA-St. Louis expresses its strong support for Mr. Gene McNary in his nomination as the Chief of the US Immigration and Naturalization Service. This support is derived from an opinion poll taken on 23, 24 Sept. 1989 of four members of the Board of Directors, the current President and five Vice Presidents of OCA- St. Louis. The result of this poll is eight (8) in favor, one (1) no opinion, one (1) absent. The most important reason for this support is that Mr. Gene McNary has been very responsive to the OCA-St. Louis in matters regarding Chinese American's request and welfare, at least in the St. Louis area.

As for the alleged insensitivity for the homeless, the OCA-St. Louis does not have the necessary evidence. Furthermore, the OCA-St. Louis believes that St. Louis City, not St. Louis County (Mr. McNary is the County Supervisor, has no jurisdiction over St. Louis City) should not be responsible, since most of the homeless are in St. Louis City.

As for the lack of experience, Mr. McNary has plenty of governing and leadership experience as the St. Louis County Supervisor for the last 12 years. As for the specialty in immigration, there are those career officers and professionals in the Immigration and Naturalization who will no doubt guide and advise any bureau chief to the proper course of action.

For these reasons and our overwhelming support expressed by OCA-St. Louis Board of Director and current officers, it is our sincere hope that OCA-National will consider and respect the position taken by OCA-St. Louis in determining a national position for the purpose of testifying in the confirmation hearing to be conducted by the US Congress on 3 October 1989.

- ATTACHMENT A -

PORTMAN. EDWARDS. COOPER & SINGER
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RICHARD H. EDWARDS
ROGER P. BERNHARDT
DONALD S. SINGER*
DARWIN PORTMAN
PAUL F. BLACK
GREGORY H. WOLK*
MICHAEL R. YOUNG

ROBERT W. EHRIG
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*LICENSED IN ILLINOIS

September 29, 1989

EXPRESS MAIL

Hon. Paul Simon
United States Senator
Subcommittee on Immigration and Refugee Policy
Senate Judiciary Committee
524 Dirksen Senate Office Bldg.
Washington, DC 20515

RE: Hearings on Gene McNary's Nomination for Commissioner,
U. S. Immigration & Naturalization Service

Dear Senator Simon:

As someone who is personally acquainted with Gene McNary, and who has resided in St. Louis County for over 30 years, and who is a practicing Immigration attorney, I feel compelled to write to you and the other members of the Senate Subcommittee on Immigration and Refugee Policy of the Senate Judiciary Committee which will shortly consider Mr. McNary's qualifications to be the Commissioner of the U. S. Immigration & Naturalization Service.

I support his nomination and confirmation. I believe that Mr. McNary is an extremely competent administrator, which is what it appears the Immigration Service is in need of. Further, I think that Mr. McNary will be well attuned to the practicalities of Immigration Law. I think that he will be responsive to the concerns of the business community and that he will give due consideration to family reunification and humanitarian concerns.

I first met Gene McNary when he moved to St. Louis in the early 1960's and was in the private practice of law in downtown St. Louis. At that time I was impressed with his knowledge and ability. After several years of private practice he was a Public Defender, before winning election as St. Louis County Prosecuting Attorney in 1966. I would see him and speak with him on infrequent occasions when we would happen to bump into each other at the courthouse. My high regard for his ability continued. When he was elected County Executive of St. Louis County in 1974, I saw him on a less frequent basis, simply because or paths didn't cross as often. I would run into him and chat with him at lunch or when we saw each other on the street, or occasionaly at County Council meetings and occasionally at Bar Association functions. My high regard for him as a person and as an attorney continued. He and I frequently had differences of opinion with regard to matters coming before the County Council, but that is to be expected: he is a Republican and a fairly conservative one; and I'm a Democrat and a fairly liberal one. Usually these disagreements were with regard to the St. Louis County Administration's position with regards to spending for basic human needs and social welfare issues.

Even though I often disagreed with Gene McNary, I never considered him anything other than an effective spokesman and an able administrator. He thinks things through and considers all aspects, pro and con, before making a decision. If he needs more information before making a decision, he gets it. He is not prone to shoot from the hip. If provoked, he can be sharp and he can be sarcastic, but you always know where you stand with him and where he stands on an issue. He has a great deal of personal integrity.

He has administered St. Louis County in an extremely efficient way. There have been some minor "scandals" in some departments, but I do not think that any of them can fairly be laid at his feet. The few incidents which occurred can and do occur in any large organization. The CEO of a multimillion dollar company or entity cannot be expected to count every paper clip and verify everyone's time sheet. I think, considering the length of his administration and the size of the government he administers, the number and magnitude of the "blemishes" is extremely small and insignificant.

He is a good businessman. He is well aware of economic conditions. I think that as Commissioner of the Immigration Service he will be tuned in to the considerable needs of the business community with regards to immigration.

I do not think that his lack of experience in immigration law will be any handicap. He has already studied the framework of the law, and the major issues. He's a quick learner, and knows how to read and analyze statutes and regulations.

Nor do I think that he will overlook the family reunification issues and humanitarian issues which are constantly before the Immigration Service. I think that he will be able to review the varying considerations involved and make sound decisions, and be an effective spokesman for the Immigration Service to Congress and to the other governmental agencies and bodies involved.

I will be happy to supply any additional information I can should you or any other members of the Subcommittee so request. I strongly recommend speedy confirmation of Gene McNary for Commissioner of the U. S. Immigration & Naturalization Service.

Very truly yours,

Darwin Portman

DP:lr

Missouri
Botanical
Garden

September 28, 1989

The Honorable Joseph R. Biden, Jr.
U. S. Senate
221 Russell Building
Washington, D. C. 20510

Dear Senator Biden:

The purpose of this letter is to endorse the nomination of Mr. Gene McNary for the Commissioner of the Immigration and Naturalization Service. From my perspective as a naturalized U.S. citizen of Chinese ancestry, I know of no one who is better qualified and more suited to this important position than Mr. McNary.

After coming to the United States in 1961 as a graduate student in biology from Taiwan, I became a permanent resident in 1967 and a citizen in 1972. During those years I spent in this country prior to obtaining my citizenship, I met with officers of the INS on many occasions. They quite literally had the power to determine the direction of my career and my future. Because of this personal experience with the INS, I am very concerned that the commissioner be an individual with sensitivity to and thorough understanding of the problems of immigrants, and particularly of minority immigrants. With this concern in mind, I strongly support the appointment of Mr. McNary to this post.

When I moved to St. Louis last year, I was asked to serve on a cultural committee for the development of a "China Week". The committee was chaired by Sue McNary, Mr. McNary's wife. The event proved so successful that Mr. McNary, in his capacity as St. Louis County Executive, decided to make "China Week" an annual cultural activity, a decision warmly endorsed by the Chinese community here. St. Louis city and county have initiated other economic and cultural programs involving China and other countries of the Pacific Rim, with strong leadership from Mr. McNary. While serving on this committee, I was deeply impressed by the understanding, appreciation, and respect that both Mr. and Mrs. McNary demonstrated for Chinese cultural and social values. They certainly have won the respect and friendship of the Chinese community of St. Louis for their activities. My experience in St. Louis has been of limited duration, but from what I have seen I have no doubt that you will receive many more letters in support of Mr. McNary from other ethnic and minority groups.

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St. Louis, Missouri 63166-0299
Telephone (314) 577-5100
Telex 166221 MOBOT UT
Cable MOBOTSTL

Director's Office
Fax (314) 577-9595

The Honorable Joseph R. Biden, Jr.
September 28, 1989
Page 2

Thank you for your time and attention, and let me close by repeating that I strongly endorse the nomination of Mr. Gene McNary as Commissioner of the Immigration and Naturalization Service.

Sincerely yours,

William Tai

William Tai, Ph.D.
Coordinator, Flora of China Project

WT/pch

BC: Mr. McNary ✓

AMERICAN MEDICAL ASSOCIATION

535 NORTH DEARBORN STREET • CHICAGO, ILLINOIS 60610 • PHONE [illegible]

JAMES H. SAMMONS, M.D.
Executive Vice President
(645-4300)

July 26, 1989

The Honorable Gene McNary
St. Louis County Executive
St. Louis County Government Center
41 South Central
Clayton, Missouri 63101

Dear County Executive McNary:

It is my great pleasure to inform you that by unanimous vote of the judges' panel you and Mayor Vincent Schoemehl have been chosen as the recipients of the Dr. Nathan Davis Award for the category of Outstanding City Mayor and or Elected Chief Executive of a County. This is a joint award presented in recognition of your collective efforts in behalf of the public health in Greater St. Louis.

The AMA inaugurated these Awards this year to recognize outstanding public service in seven categories. They are named for the founder of our Association. The panel of judges included Mrs. James A. Baker, III, The Honorable Warren E. Burger, Retired Chief Justice of the United States; The Honorable Clark MacGregor, former Member of the House of Representatives; Alan R. Nelson, M.D., President, American Medical Association,; James H. Sammons, M.D., Executive Vice President, AMA; Robert A. Schoellhorn, Chairman and CEO, AbbottLabs; John J. Sweeney, International President, Service Employees International Union, AFL-CIO; and James B. Wyngaarden, M.D., Former Director, National Institutes of Health.

We hope that you will be as honored by the receipt of this award as we at the AMA are in presenting it to you upon your selection by the Judges. You were nominated for this joint award by Ned Taddeucci, President, St. Louis Regional Commerce and Growth Association.

The awards will be publicly announced in mid-August and presented at a banquet in Washington D.C. on Tuesday, October 3, 1989. We are hopeful that you and Mrs. McNary will be able to attend. We will be happy to reimburse you for your roundtrip airfare and lodging at the Madison Hotel.

I am asking our consultant, Roy Pfautch, to correspond with your office to obtain necessary material for the public announcement and to facilitate your participation in the Awards Dinner. Again, congratulations upon this signal recognition of your great contributions "to promote the art and science of medicine and the betterment of the public health" during the course of your public career.

Sincerely,

James H. Sammons, M.D.

Anti-Defamation League ADL of B'nai B'rith

Missouri, Central & Southern Illinois Region
10926 Schuetz Rd., St. Louis, MO 63146 • (314) 432-6868

FOR FURTHER INFORMATION:
Stanley J. Anderman, Regional Director

NEWS

ADL HOSTS ANNUAL MEETING

FOR IMMEDIATE RELEASE

September 21, 1989...The annual meeting of the Missouri-Southern Illinois Region of the Anti-Defamation League of B'nai B'rith will feature an address by Michael Lieberman, on "Priorities for the Jewish Community in the 1990's: A Washington Perspective," and a special award to St. Louis County Executive Gene McNary. The event will be held Thursday, October 12th, 7:30p.m., at the Holiday Inn Clayton Plaza.

Lieberman is the Associate Director and Legal Counsel in the Washington DC office of the ADL, where he helps coordinate the ADL's involvement in legislative initiatives before Congress and assists in the development and implementation of ADL policy positions on a wide range of domestic and international affairs.

McNary, St. Louis County's Chief Executive has served St. Louis County for four terms from 1975 to the present. Currently, he is awaiting confirmation by the Senate Judiciary Committee on his nomination by President Bush to head the U.S. Immigration and Naturalization Service, a part of the Justice Department.

The event will include the installation of new officers and members of ADL's Regional Advisory Board, and a special award

-more-will be presented to Gene McNary.

ADL is one of the nation's oldest human relations agencies. Begun in the Midwest, it is international in the scope of its service network with 31 regional offices in the United States, an Israel office in Jerusalem, a European office in Paris, affiliated offices in Latin America and Canada, and a consultant in Rome. In purpose and program, ADL's mission is to "stop the defamation of the Jewish people and to secure justice and fair treatment for all citizens alike."

Reservations may be made by calling the ADL office, 432-6868. Cost per person is $18.

-30-

ST. LOUIS POST-DISPATCH
SUNDAY, AUGUST 20, 1989

Gene McNary For Immigration Job

By Stuart Symington Jr.

President Bush has nominated Gene McNary, St. Louis County executive, as commissioner of the Immigration and Naturalization Service. The public should have no concern about McNary's ability to perform his duties.

Before looking at McNary's qualifications, one needs to understand the job he is being asked to perform. The INS is a division of the Department of Justice. The commissioner's responsibilities are delegated to him by the attorney general. The INS administers federal law concerning admission, exclusion, detention, deportation and naturalization of aliens.

The Immigration Reform and Control Act of 1986 significantly expanded the INS' responsibilities to process the legalization of illegal aliens who have been granted amnesty, administer agricultural worker programs, enforce sanctions against employers who hire illegal aliens and deter further illegal immigration.

The INS employs some 18,000 people in 1,500 offices worldwide. Its 1989 budget is close to $1 billion. Most of the budget goes toward preventing illegal entry and facilitating legal entry. In any given year, the INS expels more than a million aliens, detains 100,000, handles over a million applications for temporary resident status and completes almost 500,000 naturalization applications.

In addition, the service annually processes entry of millions of tourists, students, business visitors, trainees and temporary workers. Temporary entry into the United States requires preliminary State Department approval, followed by inspection and examination by the INS to determine admissibility.

As a practical matter, an alien must fall into a preference category to be admissible for permanent residence. Preference aliens, other than relatives of citizens or permanent residents, must either have exceptional ability or a job that the Labor Department has found is in short supply in the United States.

In addition to the standard preference categories, federal law provides for entry in the United States of refugees and "asylees." While the service plays a part in such proceedings, by no means does the commissioner have a free hand.

Rather, as might be expected for such a sensitive subject, all three branches of government have their fingers in the pie.

Congress has authorized the president to establish annual refugee ceilings after consultation with the committees on the judiciary of the House and Senate. Upon such determination by the president, the attorney general is authorized to admit eligible refugees.

Congress has also required the attorney general to establish a procedure to grant asylum to aliens in the United States who would otherwise qualify as refugees. Refugee status depends upon a showing of persecution, or a well-founded fear of persecution, on account of race, religion, nationality, membership in a particular social group or political opinion. In 1987, the attorney general established an Asylum Policy and Review Unit to assist and advise him and the INS in matters relating to asylum. Denial of refugee or asylum status is subject to administrative review and to review by the federal courts.

Thus, any attempt by the commissioner to display insensitivity toward the requirements of federal law would be constrained institutionally and judicially and by the pressures of interested private and corporate constituencies.

At the present time, the INS is overworked and understaffed. It lacks the personnel to deal with the numerous additional responsibilities Congress has imposed on it. Accordingly, the INS clearly needs a vigorous, capable and experienced administrator. Further, the commissioner should enjoy the full confidence of the Bush administration and have the courage to battle for the resources the INS needs.

Finally, both the law and common sense require the commissioner to work with not only concerned agencies in the executive branch but with Congress.

Nothing in McNary's record suggests that he lacks the experience, ability and vigor to handle the commissioner's job. As St. Louis County executive for more than 14 years, he served as chief administrator over several thousand employees and what is currently a $185 million budget. He was an excellent administrator and ran an efficient shop.

Nobody doubts his courage to fight for what he believes in. As county executive, he worked with a variety of constituencies. He dealt with the structure of county government, realignment of functions, data processing and training of personnel.

He is an experienced lawyer on a human scale, having served two terms as prosecuting attorney and having handled hundreds of cases as an assistant public defender. His lifelong dedication to improved detention and correctional facilities has prepared him to supervise the detention responsibilities of the INS in a humane way.

As a successful elected official serving a sophisticated constituency, McNary is well aware that politics is the art of the possible and, one might add, the reasonable. His credentials more than make up for his lack of parochial experience in the service he will head.

The St. Louis community should be proud that one of its citizens has been chosen to head an important federal agency and wish him well.

Stuart Symington Jr. is a lawyer with a Clayton firm.

The American Jewish
Committee

OFFICE OF THE WASHINGTON REPRESENTATIVE, [illegible] Massachusetts Avenue, N.W. Washington, [illegible]

September 20, 1989

Senator Edward Kennedy
315 Russell Office Building
Washington, DC 20510

Dear Senator Kennedy:

As you know, on September 25 the Judiciary Committee is scheduled to consider the nomination of Gene McNary for the post of Commissioner of the Immigration and Naturalization Service (INS). This position is very important to our organization as well as to the entire Jewish community because the Commissioner is a central figure in refugee and immigration policies and practices.

The role of the INS Commissioner is crucial to ensuring a full debate and to helping develop and implement policies that contribute to our identity as a nation and to the health of our pluralistic society. The Commissioner's role is also critical in preventing the misuse of immigration and refugee issues to incite fears about changes in the status quo and to increase ethnic and racial tensions.

AJC has been vitally interested in refugee flows to the United States throughout this century and has had a particular interest in the numbers of, funding for, and processing of refugees. While much of our focus has been on Soviet Jewry, we also are deeply concerned about refugee and asylum policies and practices as they impact on Southeast Asia, Latin America, and Africa. We also are concerned about legal immigration and current efforts at reform. The INS Commissioner is central in these and other areas.

At present, we have no position on Mr. McNary's appointment. While we are encouraged by his reputation as an able administrator, we have heard conflicting reports about his appropriateness for this job. We believe that it is essential for the Judiciary Committee to undertake a complete investigation, and to postpone confirmation hearings until this inquiry has been completed.

Thank you for your attention to our views.

Sincerely,

Sholom D. Comay
President

EYE AND VISION CARE, LTD.
OPTOMETRY
(314) 381-3633
7266 NATURAL BRIDGE
ST. LOUIS, MO 63121

JAMES A. DE CLUE, O.D.

16 September 1989

The Honorable Edward M. Kennedy
United States Senate
Washington, DC 20510

Dear Senator Kennedy:

I have been requested to express my views and suggestions pertaining to the nomination of Mr. Gene McNary to head the Immigration and Naturalization Service.

Mr. McNary's extensive terms of office as St. Louis County Executive in the State of Missouri has been one replete with insensitivity to the welfare of minorities. He should be rejected for the position that he has been nominated to direct.

I was the Chairman of the Education Committee of the St. Louis NAACP during the years 1972-1983, when St. Louis and St. Louis County was involved in a massive school desegregation case. During 1980-1983 I was alson the president of the St. Louis Branch of the NAACP. My observations from that vantage point was of a county executive who was completely opposed to the change from the illegally segregated school system in this area. He has consistently opposed the establishment of adequate housing in St. Louis County for the needy minority residents. Housing relief was obtained only after the federal courts intervened.

Mr.McNary was the architect of the destruction of the county hospital in St. Louis County. This was done to make way for the real estate developers to exploit the land. His insensitivity to the needs of poor residents of St. Louis County is well documented.

His political career has been one based on the exploitation of racial bias in the community and thereby projecting a complete lack of feeling for minorities. He is not qualified for any position pertaining to the well being of minority citizens in the United States of America.

If you were to ask "Where was Gene", you will discover that Gene McNary was never around when the needs of minorities were being addressed in St. Louis County.

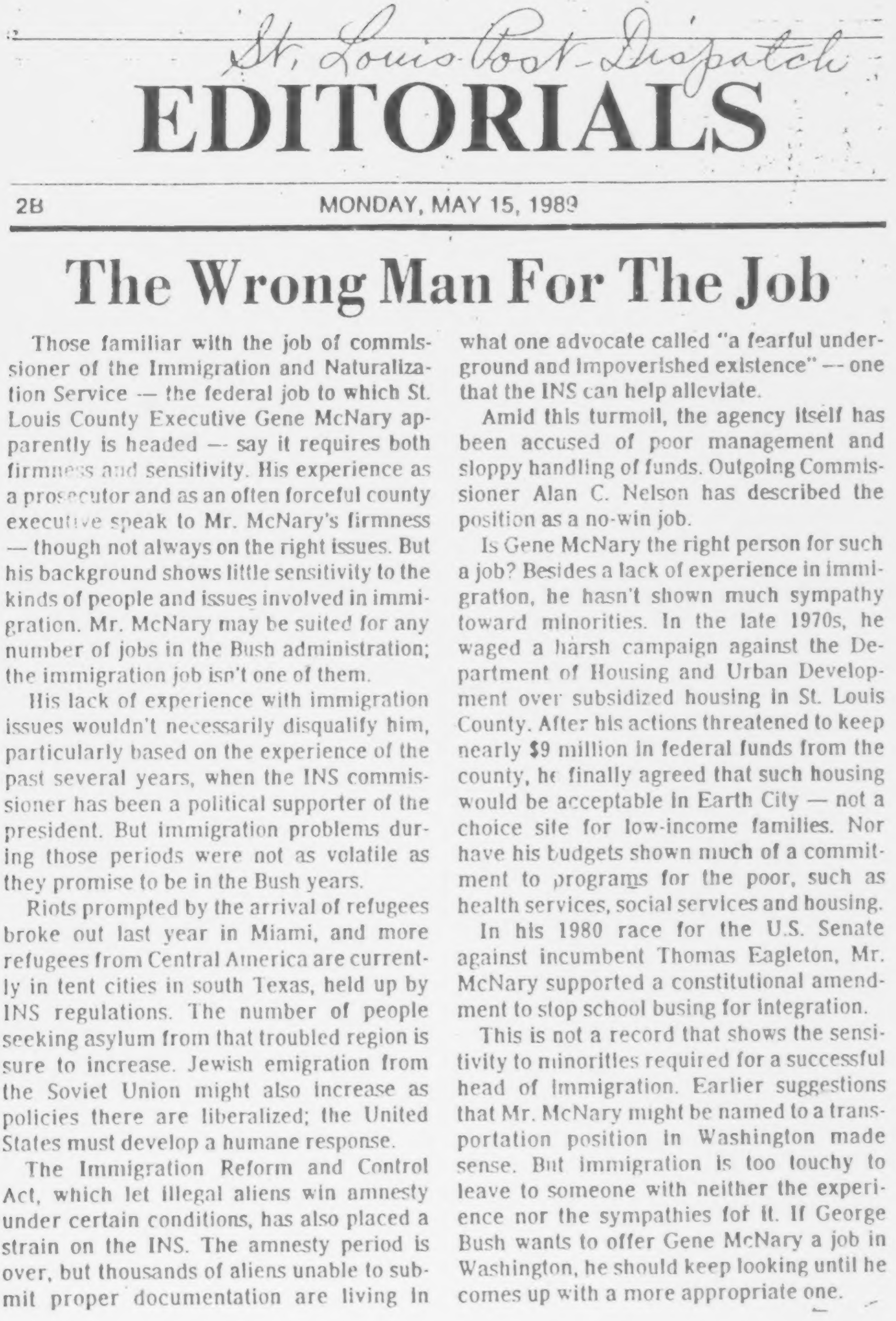
You should reject this man for many reasons, but mainly because you will be doing that which is right.

With kindest regards.

Sincerely,

James A. De Clue, O.D.

cc: The Honorable William Clay



St. Louis Post-Dispatch

EDITORIALS

2B MONDAY, MAY 15, 1989

The Wrong Man For The Job

Those familiar with the job of commissioner of the Immigration and Naturalization Service — the federal job to which St. Louis County Executive Gene McNary apparently is headed — say it requires both firmness and sensitivity. His experience as a prosecutor and as an often forceful county executive speak to Mr. McNary's firmness — though not always on the right issues. But his background shows little sensitivity to the kinds of people and issues involved in immigration. Mr. McNary may be suited for any number of jobs in the Bush administration; the immigration job isn't one of them.

His lack of experience with immigration issues wouldn't necessarily disqualify him, particularly based on the experience of the past several years, when the INS commissioner has been a political supporter of the president. But immigration problems during those periods were not as volatile as they promise to be in the Bush years.

Riots prompted by the arrival of refugees broke out last year in Miami, and more refugees from Central America are currently in tent cities in south Texas, held up by INS regulations. The number of people seeking asylum from that troubled region is sure to increase. Jewish emigration from the Soviet Union might also increase as policies there are liberalized; the United States must develop a humane response.

The Immigration Reform and Control Act, which let illegal aliens win amnesty under certain conditions, has also placed a strain on the INS. The amnesty period is over, but thousands of aliens unable to submit proper documentation are living in what one advocate called "a fearful underground and impoverished existence" — one that the INS can help alleviate.

Amid this turmoil, the agency itself has been accused of poor management and sloppy handling of funds. Outgoing Commissioner Alan C. Nelson has described the position as a no-win job.

Is Gene McNary the right person for such a job? Besides a lack of experience in immigration, he hasn't shown much sympathy toward minorities. In the late 1970s, he waged a harsh campaign against the Department of Housing and Urban Development over subsidized housing in St. Louis County. After his actions threatened to keep nearly $9 million in federal funds from the county, he finally agreed that such housing would be acceptable in Earth City — not a choice site for low-income families. Nor have his budgets shown much of a commitment to programs for the poor, such as health services, social services and housing.

In his 1980 race for the U.S. Senate against incumbent Thomas Eagleton, Mr. McNary supported a constitutional amendment to stop school busing for integration.

This is not a record that shows the sensitivity to minorities required for a successful head of immigration. Earlier suggestions that Mr. McNary might be named to a transportation position in Washington made sense. But immigration is too touchy to leave to someone with neither the experience nor the sympathies for it. If George Bush wants to offer Gene McNary a job in Washington, he should keep looking until he comes up with a more appropriate one.

ST. LOUIS POST-DISPATCH

LETTERS

The Right Man For The Job

5-19-89

The May 15 editorial, "Wrong Man For The Job," was disappointing. I was appointed assistant public defender in 1963, elected prosecuting attorney in 1966 and re-elected in '70, and elected county executive in 1974 and re-elected in 1978, 1982 and 1986.

In races for governor and the U.S. Senate, county citizens gave me substantial majorities. This amounts to more than 25 years of public service, and I believe my record in all three positions has been one of honesty, efficiency, sound management and absolute dedication to all county citizens.

I plead guilty to the charge of being firm. I think I have demonstrated the strength required of an executive, strength with fairness, but the charge that I am insensitive is wrong and unsupported by the facts.

Beginning with the Department of Housing and Urban Development case 10 years ago, the issue was not housing but whether St. Louis County would draw the housing plan or be coerced by HUD to follow its dictates.

This matter was decided in the county's favor by the federal court and confirmed the congressional intent that it was up to local government to draw its housing plan. The county's record in meeting housing needs has been a good one. By providing rehabilitated housing sprinkled throughout the county, we have met needs without neon signs and fanfare.

I took a position against forced busing because I felt it was a means of using education to bring about social changes. My decision was then and is now that education should not be secondary. Not only for the educational funds diverted to forced busing but much more revenue should go into education. When I ran for governor in 1984, I listed education as the No. 1 priority for the state, and I still believe that it is.

During my terms as county executive, my administration has been progressive and compassionate. Here are a few examples:

A few years ago, the county participated in establishing Regional hospital. The county contributed one-half of the capital outlay to this first-rate, acute-care facility.

In addition, I initiated a survey that identified clinic service areas. A North County clinic is nearing completion that will triple the size of the existing clinic, and a South County clinic is on the drawing board. These comprehensive clinics are designed to take health care to the people who need it most.

In 1975, I initiated a progressive work-release program that operates out of the county jail. It has been highly successful in rehabilitation. After a jail bond issue failed twice, I personally designed the Adult Correctional Institution Annex. This minimum-security facility is consistent with rehabilitation and, most important, eased the overcrowding, which is the breeding ground for inhumane conditions. This institution has been recognized as exemplary.

The county Department of Human Resources (DHR) has been capable and aggressive in pursuing programs designed to meet human needs and aid low-income people.

This includes training for the unemployed; a home-improvement program for thousands of low- to moderate-income families; funding of infrastructure needs for low-income areas; recreational programs and other alternatives to drug use and delinquency for youngsters in low-income neighborhoods; an array of services for isolated older adults that has provided a complete support system; assistance to low-income residents to develop marketable job skills, plus support such as day care and transportation. By being creative and with the support of nearly 1,000 volunteers, the impact of DHR has been significant and far-reaching.

Recently, at my insistence, we joined with the Urban League in carrying out a relocation plan for the people of Robertson who live in substandard and unacceptable conditions at the end of Lambert's runways. In addition, I was involved in the revitalization of Meacham Park and took the initiative to revitalize the Wagner Electric property in Wellston as a means of stabilizing the area and creating jobs in a high-unemployment area.

I led a delegation to Beijing last summer, not for ceremonial purposes but to establish a true ongoing friendship with China. This effort has been highly successful and shows great promise in the future for our peoples.

I have worked with minority leadership to be sure that minorities are represented on county boards and commissions. The county is an equal opportunity employer; we have had a fair employment plan since 1973. Our affirmative action record is a good one and our figures compare favorably with the standard metropolitan statistical area. It is my firm belief that minorities have been included in the full spectrum of participation and have significantly contributed to the county's success.

There is absolutely no reason any county citizen should be denied a basic level of governmental services and facilities because of an inadequate tax base. While there are many reasons to bring about a sensible reorganization of the county, the fact is that many municipalities have set a pattern of revenue-grabbing for themselves, which justified the call for a Board of Freeholders.

These are just a few examples, but they demonstrate the concern we in county government have for all the citizens.

I disagree with your editorial that I am not the right man for the job. I welcome the opportunity to serve my country and view the position of commissioner of the Immigration and Naturalization Service as important, complex, difficult and challenging. If I am appointed and confirmed, I am confident I can do the job. I've had many well-wishers — I'm sorry that you're not among them.

Gene McNary
County Executive
Clayton

CONFIRMATION HEARING ON: S. JAY PLAGER, GEORGE LINDBERG, DONALD AYER, AND KEVIN MICHAEL MOORE

FRIDAY, OCTOBER 20, 1989

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 2:03 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Paul Simon presiding.

All present: Senators Thurmond and Specter.

OPENING STATEMENT OF SENATOR SIMON

Senator SIMON. The committee will come to order, and I know my colleague, Senator Lugar, will forgive me for taking first the minority leader, who is over here from the House, one of the distinguished Members of the House.

If we could ask Judge Lindberg and Congressman Michel to come here, I know my colleague, Senator Dixon, plans on being here, also.

Mr. MICHEL. Thank you, Mr. Chairman. May I begin with my introduction of our distinguished candidate?

Senator SIMON. You may begin with your introduction.

STATEMENT OF HON. ROBERT MICHEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. MICHEL. Let me thank you, obviously, and the other members of the committee for the opportunity to appear here today. I know the committee is very busy and I won't impose long on your time.

George Lindberg's career demonstrates high achievement in many fields, but I am just going to give you a few highlights, recognizing that you and the committee will want to ask your own questions of him, and to introduce to you Justice George W. Lindberg, the President's choice to be a Federal judge for the northern district of Illinois.

George was born in Crystal Lake, IL, where he now resides. He attended Northwestern University, receiving a bachelor of science degree in 1954 and his law degree in 1957. He is married, with his wife and two daughters present here today.

He comes to you with splendid credentials. He is currently justice of the Appellate Court of Illinois, Second Judicial District. From 1967 to 1973, he was a representative in the Illinois General Assembly; in 1973, elected as comptroller of our State of Illinois—

incidentally, the first person to hold that position in the history of the State—and in 1977 and 1978, appointed first assistant and then deputy attorney general of the State of Illinois.

From 1955 to 1968, as polygraph examiner of John E. Reed & Associates, he conducted over 5,000 polygraph examinations, supervised the training and work of over 50 individuals, lectured at the university in law enforcement seminars on criminal interrogation, confessions, and polygraph technique. He has also been a practitioner of general law, the recipient of the Jaycees' Distinguished Service Award, the Illinois Press Association's Goldfish Bowl Award for facilitating public access to government fiscal information.

So to this layman, it seems as if Justice Lindberg will bring to the Federal court not only a knowledge of the law, but a background that has allowed him to see our community life and our criminal justice system from many different points of view. I am greatly impressed with the depth and variety of his experience, and believe you will be as well.

Mr. Chairman and members of the committee, I can't overemphasize the respect and admiration for George Lindberg felt by those who have come to know him personally and by thousands of fellow Illinoisans who have placed such important public trust in his capable hands.

I know that you will want to hear Justice Lindberg's views and get a chance to know him, so I would conclude by simply saying how impressed I am with George's achievements and his character. I have known him personally for many years.

Incidentally, the distinguished late Senator for whom this building was named was a good friend and mentor of George, as he was of mine, for many years. He meets, certainly, the highest standards of character, temperament, and knowledge.

And, Mr. Chairman, as you know, under a given set of circumstances where I serve as the senior Republican in the congressional delegation, we have had the opportunity to interview a number of the candidates for judicial posts over a period of years now, and it was certainly the unanimous view of those who were privileged to have George come down and undergo the interrogation that we felt necessary as a preliminary to these proceedings to make absolutely sure that the best recommendation was made to the President so that he, in turn, could make the recommendation that he has made to you.

I am very happy to introduce formally to you Justice George Lindberg.

Senator SIMON. Thank you very much, Congressman Michel. Let me just add, I concur in his views. I first got to know George Lindberg when he was a State legislator. And to Judge Lindberg, I would just add that Bob Michel is highly regarded by people in both chambers and in both parties.

My colleague, the senior Senator from Illinois—I say the very senior Senator from Illinois—is here to add to the introduction.

STATEMENT OF HON. ALAN J. DIXON, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator Dixon. Thank you, Mr. Chairman. I apologize for being a few moments late. I was presiding in the Senate until 2 o'clock. But I am delighted to be here to speak on behalf of George Lindberg, who is a first-class person and will be an outstanding U.S. district court judge.

If the Chair will recall, I served in the Senate as the assistant leader of the Democrats at the time that my colleague and friend served in the House on the other side of the aisle. It so happened, if you will remember, Mr. Chairman, that in those days I was chairman of the Judiciary Advisory Council, and my friend, George Lindberg, served on that council.

That was the council that passed all the legislation—I think, in the end, about 600 pieces of legislation—to implement the judicial article to the Constitution which I had sponsored during my time as chairman of the judiciary committee of the House.

He was a very big player in all of that, and one of the people who spent hundreds and hundreds of hours in improving the judicial system in our State. He went on from there to become a very distinguished State comptroller. He did an outstanding job there, and thereafter was elected to the Illinois Appellate Court where he has served with great distinction.

Mr. Chairman, I ask consent of the Chair and the distinguished ranking member to place in the record at my leisure later a further statement extolling the virtues of Mr. Lindberg. Since I came directly from the floor, I didn't get to the office to do that.

[The statement of Senator Dixon follows:]

STATEMENT OF SENATOR ALAN J. DIXON
IN SUPPORT OF THE NOMINATION OF
THE HONORABLE GEORGE W. LINDBERG

OCTOBER 20, 1989

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, IT IS WITH GREAT PLEASURE THAT I INTRODUCE TO YOU THE HONORABLE GEORGE W. LINDBERG, OF CRYSTAL LAKE, ILLINOIS, AND SUPPORT HIS NOMINATION AS A FEDERAL JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS.

I HAVE KNOWN JUDGE LINDBERG EVER SINCE HE SERVED IN THE ILLINOIS GENERAL ASSEMBLY AND HAVE KNOWN HIM TO BE AN OUTSTANDING PUBLIC SERVANT.

JUDGE LINDBERG IS TRULY A SON OF ILLINOIS, MR. CHAIRMAN. BORN AND RAISED IN MCHENRY COUNTY, NORTHWEST OF CHICAGO, HE RECEIVED BOTH HIS UNDERGRADUATE AND LAW DEGREES FROM NORTHWESTERN UNIVERSITY IN EVANSTON, ILLINOIS, AND WENT ON TO PRACTICE LAW WITH THE FIRM OF JOHN REID AND ASSOCIATES OF CHICAGO, INTERNATIONALLY RECOGNIZED AUTHORITIES ON THE APPLICATION OF THE POLYGRAPH TECHNIQUE AND CRIMINAL INTERROGATION.

HE WAS ELECTED TO THE ILLINOIS GENERAL ASSEMBLY IN 1967, SERVING UNTIL 1973, AT WHICH TIME HE WAS ELECTED TO THE NEWLY CREATED ELECTIVE OFFICE OF COMPTROLLER.

MR. CHAIRMAN, LET ME POINT OUT THAT JUDGE LINDBERG, UPON ELECTION TO THE POSITION OF COMPTROLLER, TOOK ON AN ENORMOUS RESPONSIBILITY. THE OFFICE OF COMPTROLLER WAS RESPONSIBLE FOR INSTITUTING THE FIRST UNIFORM STATEWIDE ACCOUNTING SYSTEM SO AS TO DETERMINE THE FINANCIAL POSITION OF THE STATE AT ANY GIVEN TIME. THE OFFICE WAS RESPONSIBLE FOR ISSUING TAX REFUND CHECKS AS WELL. THE PRINCIPAL FUNCTIONS OF THE OFFICE WERE IMPLEMENTED WITHIN EIGHTEEN MONTHS OF HIS ASSUMING OFFICE.

SOME 50,000 CHECKS A DAY WERE DRAFTED AND MAILED FROM HIS OFFICE. HIS HARD WORK AND COMMITMENT BECAME A MODEL FOR SUCCESSIVE COMPTROLLERS.

HIS HARD WORK AND DEDICATION AS AN APPELLATE COURT JUSTICE HAVE SERVED THE PEOPLE OF ILLINOIS WELL. HE WAS RETAINED BY ELECTION FOR A SECOND TERM AS AN APPELLATE COURT JUSTICE BY 78.5 PERCENT OF THE VOTERS IN THE SECOND JUDICIAL DISTRICT OF ILLINOIS. ALL ASPECTS OF THE LAW ARE CONSIDERED BY THE APPELLATE COURT, AND JUDGE LINDBERG HAS BROUGHT TO THE BENCH THE SAME MARK OF PROFESSIONALISM AND FAIRNESS DEMONSTRATED WHILE A MEMBER OF THE LEGISLATIVE BRANCH OF GOVERNMENT IN ILLINOIS.

HE HAS ALWAYS SOUGHT TO BRING THE TRUTH TO LIGHT. HIS EFFORTS TO EXPOSE WRONGFUL PRACTICES BY MEMBERS OF THE ILLINOIS SUPREME COURT LED TO REFORMS WRITTEN IN TO THE 1970 ILLINOIS CONSTITUTION, INCLUDING THE REQUIREMENT OF ALL STATE OFFICIALS, INCLUDING JUDGES, TO FILE A PUBLIC ECONOMIC DISCLOSURE STATEMENT.

JUDGE LINDBERG HAS SERVED IN ALL THREE BRANCHES OF STATE GOVERNMENT IN ILLINOIS, AND HAS SERVED IN THEM ALL WITH DISTINCTION, MR. CHAIRMAN.

I AM VERY PROUD TO CALL JUDGE LINDBERG A FELLOW ILLINOISAN. I AM QUITE CONFIDENT THAT YOU TOO WILL FIND HIM TO BE A MAN OF OUTSTANDING CHARACTER AND INTEGRITY. I URGE MY COLLEAGUES TO CONFIRM JUDGE GEORGE LINDBERG AS A FEDERAL JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS.

I THANK THE CHAIRMAN.

Senator Dixon. But I only conclude by saying he presents the opportunity to this committee to place upon the Federal bench an outstanding individual who will serve with great distinction. I am proud to be his friend. I am proud to recommend him to this committee, and I know that he will be a great credit to our country.

Senator Simon. Thank you very much.

Judge Lindberg, do you have some members of your family here you would like to introduce?

Justice Lindberg. Yes, I do.

Senator Simon. I know you have at least three here.

Justice Lindberg. Yes. My wife, Linda, is here, and my daughters, Karen and Kirsten, and my niece, Barbara Snively, and her husband, Joe.

Senator Simon. We are very happy to have all of you here. If my colleagues wish to add anything, you may.

Senator Thurmond. Well, I am sure, with the endorsement of such an outstanding, distinguished, and able Democrat as Senator Dixon and a distinguished and able congressional leader in the House as Congressman Michel——

Senator Simon. He has my endorsement, too, here, Senator Thurmond. [Laughter.]

Senator Thurmond. I just started to say I felt you would be confirmed with no trouble. Now, it is concluded; he will be confirmed. [Laughter.]

We are delighted to have you with us. We thank all of you for coming.

Senator Simon. Thank you very, very much, and you can be excused at this point, Judge Lindberg.

Congressman Wyden, unless you have something urgent, if I can call on Senator Lugar next, and Mr. Plager.

Senator Lugar, we are very pleased to have you here.

STATEMENT OF HON. RICHARD G. LUGAR, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator Lugar. Thank you, Mr. Chairman, Senator Thurmond, and Senator Specter. It is a very great privilege to have the honor of introducing to this committee Jay Plager, a nominee for the position of U.S. circuit court judge for the Federal circuit.

Jay Plager and his wife, Ilene Nagel, came to Washington, DC, in 1986 when Ilene was appointed to serve on the U.S. Sentencing Commission and Jay was chosen as counselor to the Under Secretary at the Department of Health and Human Services. They are both on loan to the Federal Government from Indiana University Law School, where the two of them served as professors and Jay spent 7 years as dean of this prestigious school.

Jay Plager has had a varied and impressive career in the areas of law, administration, and government service. He is a scholar in his own right, graduating first in his class at the University of Florida Law School in 1958, where he was editor-in-chief of the Law Review and a member of the Order of the Coif.

He went on to Columbia University in New York, obtained his masters of law 2 years later. He has published widely in various law and social science journals. Jay Plager also took time to serve his country both in active duty in the U.S. Navy and, over a period of 16 years, in the Naval Reserve.

He started his career as a professor of law at the University of Florida. Throughout his tenure as a law professor and dean, he has been associated with such eminent institutions as the University of Illinois, the University of Wisconsin, Indiana University, Stanford University, the University of the Pacific, and Cambridge University, and Trinity College in England.

Jay currently serves as the Administrator for the Office of Information and Regulatory Affairs at OMB, a position for which he was initially confirmed under the Reagan administration. President Bush has asked Jay to stay on at OMB after the change of administrations.

Mr. Plager has assumed the responsibilities as Executive Director of the President's Council on Competitiveness, working closely with another fellow who is your Vice President, Dan Quayle.

He shares with me a love for long-distance running, and the discipline he displays in running marathons is certainly an indication of the effort and discipline he puts forth in every facet of his life.

Mr. Chairman and members of the committee, I urge you to give favorable consideration to this nomination.

Senator SIMON. We thank you very, very much.

Mr. Plager, do you have members of your family here?

Mr. PLAGER. Mr. Chairman, my wife, Ilene Nagel, is here, and I would be pleased to introduce her.

Senator SIMON. We are very happy to have you with us here.

Senator Thurmond, do you want to add anything here?

Senator THURMOND. Well, I just want to congratulate him upon his appointment by the President, and also congratulate him for having the high endorsement of two able Senators here. Senator Coats has sent a statement here strongly in your favor and he endorses you to the highest.

You have sitting beside you one of the most influential Senators in this body, and with those endorsements, I don't see how you can fail.

Mr. PLAGER. Thank you, Senator.

Senator SIMON. We thank you very, very much.

Senator LUGAR. Thank you very much, Mr. Chairman.

Senator SIMON. Congressman Wyden, forgive me for not knowing which nominee you are here for.

Mr. WYDEN. Mr. Ayer.

Senator SIMON. Mr. Ayer and Congressman Wyden, will you please both come forward?

Senator THURMOND. Mr. Chairman, could I place in the record a statement by Senator Coats at this time endorsing Mr. Plager?

Senator SIMON. Without objection.

[The statement of Senator Coats follows:]

STATEMENT OF SENATOR DAN COATS
ON BEHALF OF THE NOMINATION OF
S. JAY PLAGER
TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT
BEFORE THE SENATE COMMITTEE ON THE JUDICIARY

October 20, 1989

MR. CHAIRMAN, I AM PLEASED TO TESTIFY TODAY BEFORE THIS COMMITTEE ON BEHALF OF S. JAY PLAGER, WHO HAS BEEN NOMINATED BY THE PRESIDENT OF THE UNITED STATES TO FILL A VACANCY ON THE U. S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT.

I NEED NOT RECITE ALL THE INFORMATION YOU ALREADY HAVE IN MR. PLAGER'S RESUME AND FORM 171. SUFFICE IT TO SAY THAT JAY PLAGER IS A LAWYER, ADMINISTRATOR, EDUCATOR AND BUDGETARY AND REGULATORY SPECIALIST---A MODERN RENAISSANCE MAN OF MANY ACCOMPLISHMENTS AND CONSIDERABLE EXPERIENCE IN BOTH THE PRIVATE AND PUBLIC SECTORS.

JAY HAS DEVOTED MUCH OF HIS LIFE TO THE SERVICE OF HIS COUNTRY, FIRST AS NAVAL OFFICER, RISING TO LIEUTENANT JUNIOR GRADE IN ACTIVE DUTY AND THEN TO COMMANDER IN THE NAVAL RESERVE, AND LATER AS FEDERAL ADMINISTRATOR, FIRST AS COUNSELOR TO THE UNDER SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, THEN AS

ASSOCIATE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET IN THE EXECUTIVE OFFICE OF THE PRESIDENT, FINALLY AS ADMINISTRATOR OF THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS.

IT WAS WHILE HE WAS AT OMB THAT HE EARNED HIS EXCELLENT REPUTATION AS AN EXPERT ON BUDGET POLICY AND REGULATORY MATTERS. IN 1987 HE WAS APPOINTED TO HIS FIRST OMB JOB WHERE HE EXERCISED SUPERVISORY RESPONSIBILITY FOR THE BUDGETS OF THE DEPARTMENTS OF EDUCATION, LABOR, HEALTH AND HUMAN SERVICES, AND VETERANS AFFAIRS, PLUS TWENTY-SIX INDEPENDENT AGENCIES. HE PROVIDED OVERSIGHT FOR ABOUT 40 PERCENT OF THE ENTIRE FEDERAL BUDGET, OVER $500 BILLION ANNUALLY. HE DID SUCH A GOOD JOB WITH SUCH AN ENORMOUS TASK THERE THAT IN 1988 HE WAS PROMOTED BY PRESIDENT REAGAN AND CONFIRMED BY THE SENATE TO HEAD THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS, WHERE HE WAS RESPONSIBLE FOR THE PAPERWORK REVIEW AND INFORMATION RESOURCE MANAGEMENT PROGRAMS OF THE ENTIRE FEDERAL GOVERNMENT, AS WELL AS OVERSIGHT OF THE FEDERAL REGULATORY PROGRAM.

MR. PLAGER PLAYED A CRUCIAL ROLE IN THE SUCCESS OF THAT ADMINISTRATION'S REGULATORY REFORM EFFORT, AN IMPORTANT COMPONENT IN THE REAGAN ECONOMIC PROGRAM, WHICH HELPED TO REDUCE THE COSTS OF FEDERAL REGULATION, STIMULATE GROWTH AND ENHANCE PRODUCTIVITY AND THUS CONTRIBUTE TO AMERICA'S COMPETITIVENESS IN THE GLOBAL ECONOMY. AT OMB HE WORKED CLOSELY WITH SENIOR EXECUTIVES OF THE VARIOUS DEPARTMENTS AND AGENCIES, WITH WHITE HOUSE OFFICIALS, AND WITH MEMBERS OF CONGRESS, AS WELL AS WITH STATE AND LOCAL

OFFICIALS. HE RAN A STAFF OF APPROXIMATELY 60 BUDGET ANALYSTS, ECONOMISTS, AND OTHER PROFESSIONALS.

HE ALSO SERVED AS EXECUTIVE DIRECTOR OF THE TASK FORCE ON REGULATORY RELIEF, CHAIRED BY THEN-VICE PRESIDENT GEORGE BUSH. UPON HIS ELECTION PRESIDENT BUSH ASKED HIM TO STAY ON AS OIRA ADMINISTRATOR AND TO SERVE AS EXECUTIVE DIRECTOR OF THE PRESIDENT'S RECENTLY ESTABLISHED COUNCIL ON COMPETITIVENESS, CHAIRED BY VICE PRESIDENT QUAYLE. OBVIOUSLY PRESIDENT BUSH WAS SO IMPRESSED BY JAY'S ABILITIES THAT HE NOMINATED HIM TO THE APPELLATE BENCH.

I CAME TO KNOW OF JAY DURING HIS INDIANA YEARS. FROM 1977 TO THE PRESENT HE HAS BEEN A PROFESSOR LAW AT THE INDIANA UNIVERSITY SCHOOL OF LAW IN BLOOMINGTON. HE IS CURRENTLY ON LEAVE FROM THAT POSITION TO THE FEDERAL GOVERNMENT. HE SERVED AS DEAN OF THE I U LAW SCHOOL FOR SEVEN YEARS, DURING WHICH HE EARNED A SOLID REPUTATION AS A SOUND ADMINISTRATOR, DEEPLY COMMITTED TO IMPROVING THE LAW SCHOOL. DURING HIS TENURE HE COULD TAKE CREDIT FOR MAJOR REBUILDING PROJECTS AND RESTRUCTURING OF THE FACULTY AND STAFF, AS WELL AS EXPANSION OF ALUMNI SUPPORT AND FUND-RAISING PROGRAMS. HE ALSO INITIATED A LAW SCHOOL OFFICE OF RESEARCH AND DEVELOPMENT, EMPHASIZING INTERDISCIPLINARY AND EMPIRICAL RESEARCH, AND A MAJOR REASSESSMENT AND REVISION OF THE CURRICULUM---ALL OF WHICH ENHANCED I U'S REPUTATION AS A NATIONAL LAW SCHOOL. JAY'S CONTRIBUTIONS TO THE DEVELOPMENT OF INDIANA

UNIVERSITY AND TO THE QUALITY OF ITS LAW SCHOOL GRADUATES CANNOT BE OVEREMPHASIZED.

CLEARLY PRESIDENT BUSH HAS CHOSEN WELL IN APPOINTING JAY PLAGER TO THE FEDERAL CIRCUIT COURT OF APPEALS. AS YOU KNOW, THIS COURT TAKES APPEALS FROM THE DSITRICT AND TERRITORIAL COURTS IN PATENT, TRADEMARK AND COPYRIGHT CASES, IN CONTRACT, INTERNAL REVENUE, CLAIMS AND INTERNATIONAL TRADE CASES, IT ALSO REVIEWS ADMINISTRATIVE RULINGS BY THE PATENT AND TRADEMARK OFFICE, INTERNATIONAL TRADE COMMISSION, SECRETARY OF COMMERCE, AGENCY BOARDS OF CONTRACT APPEALS AND MERIT SYSTEMS PROTECTION BOARD. IT IS A TRIBUNAL IN WHICH A KNOWLEDGE OF ADMINISTRATIVE LAW AND REGULATORY ISSUES, A STRONG UNDERSTANDING OF LAW AND POLICY, BROAD GOVERNMENT EXPERIENCE, AND A FINE ATTENTION TO BUDGETARY AND OTHER DETAILED MATTERS IS IMPORTANT. OBVIOUSLY JAY PLAGER IS WELL EQUIPPED TO HANDLE SUCH CASES.

MR. CHAIRMAN, I AM PLEASED TO BE ABLE TO SUPPORT THE APPOINTMENT OF S. JAY PLAGER, AND I HOPE THAT THE JUDICIARY COMMITTEE WILL ACT POSITIVELY AND SWIFTLY ON HIS NOMINATION TO THE FEDERAL CIRCUIT COURT.

Senator Simon. Congressman Wyden.

STATEMENT OF HON. RON WYDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. Wyden. Thank you very much, Senator, and it is a special pleasure to be able to be here with the committee, with you, in particular, and to have the privilege of introducing Mr. Ayer to the committee. He has been nominated to be the Deputy Attorney General.

He and I have been very close personal friends for almost 20 years, since the days when we were back at Stanford University talking about law and politics and social justice. It really is a special pleasure to have an opportunity to be here and introduce him to the committee.

Don's great wife, Anne, and their two children are here as well, perched on the front row, and I know Don will want to introduce them to the committee as well.

There are a number of areas that Don has focused on in his many years in public service that I think commend him, in particular, to the Senate at this time. He has been very active in the field of white-collar crime, developing a special effort within the U.S. Attorney's Office of the Eastern District of California in that regard.

He has also been very active in drug enforcement matters, personally prosecuting major drug cases. And in a growing matter of concern to all of us, particularly those on the west coast, he has been involved in the effort to fight this growing menace of methamphetamine labs and cocaine.

After his work as U.S. attorney in the eastern district of California, he served as the principal Deputy Solicitor General and argued 11 cases before the Supreme Court. So he has very significant trial experience, very significant administrative experience.

And I think more than anything, Mr. Chairman, what really brings me to commend Mr. Ayer so strongly is his sense of openness and his tolerance. He and I have debated a great many issues over the years and we don't agree on all of them and never will, but he is exceptionally open and exceptionally tolerant to ideas and the presentation of facts and objective evidence.

It gives me great pleasure to be able to be here to introduce him as a Democrat, as a Member of the House, as a longstanding friend, and commend him to this body for consideration for this extremely important post.

Senator Simon. We thank you very, very much for your appearance. I have known Congressman Wyden, and knew his father way back, I think, before Ron Wyden even was around.

Mr. Wyden. That is correct, that is correct.

Senator Simon. Mr. Ayer, do you have members of your family here?

Mr. Ayer. I do indeed, Mr. Chairman, and I would like to introduce my wife, Anne, and my two children, Allison, on the right, and Christopher, on the left.

Senator Simon. We are very happy to have you here, and I hope Allison and Christopher don't get too discouraged about the process here. It may not be quite as interesting as school, but we are happy to have you here.

Senator Thurmond.

Senator THURMOND. Thank you very much, Mr. Chairman. I just want to welcome Congressman Wyden here and thank him for his statement here on behalf of Mr. Ayer. We hope we can get him confirmed in short order.

Mr. WYDEN. Thank you, Senator.

Senator SIMON. I might add that Senator Robb hoped to be here and probably is tied up, and I know he wanted to have some kind of a statement entered into the record in behalf of your nomination, Mr. Ayer.

[The statement of Senator Robb follows:]

STATEMENT OF INTRODUCTION FOR DONALD AYER
JUDICIARY COMMITTEE
SENATOR CHARLES S. ROBB
October 20, 1989

I am pleased to introduce Donald Ayer -- a fellow Virginian and a fellow resident of McLean -- President Bush's nominee to be Deputy Attorney General at the Department of Justice.

Mr. Ayer has a distinguished career in public service and private practice. He received his Bachelor's Degree from Stanford University in 1971, and a Masters and Law Degree from Harvard University.

Upon graduation from law school, Mr. Ayer served as a law clerk to D.C. Circuit Judge Malcolm Wilkey and Supreme Court Justice William Rehnquist. Mr. Ayer continued his public service as an Assistant U.S. Attorney for the Northern District of California, as U.S. Attorney for the Eastern District of California, and as Deputy Solicitor General and Counselor to the Solicitor General at the U.S. Department of Justice. Mr. Ayer has also had stints in private practice at the distinguished law firms of Gibson, Dunn & Crutcher, and Jones, Day, Reavis & Pogue.

Mr. Ayer's legal experience spans a broad number of subject areas, including criminal law, constitutional law, labor and employment law, tort law, liability of governmental bodies, and general business litigation.

Senator **Thurmond**. Mr. Chairman, I have a statement here of Senator Pete Wilson, who asked me to put it in the record in behalf of Mr. Ayer.

Senator **Simon**. It will be entered in the record.

[The statement of Senator Wilson follows:]

STATEMENT OF
U.S. SENATOR PETE WILSON
OF CALIFORNIA
BEFORE THE COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
OCTOBER 20, 1989

NOMINATION OF DONALD B. AYER
TO SERVE AS DEPUTY ATTORNEY GENERAL
OF THE UNITED STATES

Mr. Chairman and members of the Committee, I am very pleased to be able to introduce to the Committee Donald B. Ayer, who has been nominated by President Bush to serve as the Deputy Attorney General.

The Committee has Mr. Ayer's resume, so I will not go through all of the details of his background. I do want to highlight, however, a few very impressive aspects of his experience as an attorney, especially in public service.

I first came to know Don Ayer when he was serving as U.S. Attorney in the Eastern District of California. The Eastern District encompasses an area of the state unknown to many people throughout the country. Yet, it is a center of drug production and distribution for the entire country -- for marijuana. That is why federal anti-drug efforts in the Eastern District are so important, and in this regard Don Ayer did an exceptional job working with local law enforcement agencies and marshalling federal resources.

After serving almost five years as U.S. attorney, Don was appointed to serve as Principal Deputy Solicitor General. The mission of the Solicitor General's office is a challenging one, involving an extraordinarily broad range of complex and often controversial issues. As Principal Deputy, Don distinguished himself as an able, insightful, and forceful advocate.

Mr. Chairman, there are two additional points I would like to make about Don Ayer's nomination to further indicate his exceptional qualifications for the office to which he has been nominated.

First, I would like to cite an article that recently appeared in Legal Times. The article went on at length about the great respect which Don has earned throughout the legal community. It referred to Don as someone who enjoys a reputation as "a genial administrator ... a hard charging prosecutor ... [and] no shrinking violet". That, Mr. Chairman, certainly covers the waterfront on the question of his ability to handle the job.

But a second point should also be made. Beyond his very substantial legal education and experience as an attorney, he is also well schooled in history, having received a bachelor's degree from Stanford and a master's from Harvard.

Mr. Chairman, Don's knowledge and respect for our history, as well as his extensive experience as a prosecutor and administrator, make him an exceptional choice to serve as Deputy Attorney General.

I urge the Committee to quickly bring Don Ayer's nomination to the full Senate so that he may be confirmed and allowed to continue his service to the country.

Senator SPECTER. Mr. Chairman?

Senator SIMON. Senator Specter.

Senator SPECTER. Just a comment or two. I am delighted to be here today with the nomination of Mr. Plager for the circuit judgeship of the Federal circuit, and I note his outstanding record as a professor. I am glad to be here with the nomination of the Honorable George Lindberg, and I note we will have the nomination hearing on Kevin Moore for the Director of the U.S. Marshals Service. Mr. Ayer is with us at the moment to be Deputy Attorney General, and that is a very, very important position which has enormous responsibility today, and I wanted to make just a comment or two about that.

You are taking over the No. 2 spot in a department where none is more important, and you have the administration of criminal justice which comprehends the drug issues. We had an opportunity to meet and to talk earlier, and there will be, I hope, substantial interchange between you and the Judiciary Committee in your new position.

The armed career criminal bill is a matter which there is a great deal of interest in. Congressman Wyden worked on that on the House side, as did I on the Senate side with many, many others. Further, there are the drug issues, and the involvement now with international drug cartels and movement afoot for a multinational drug strike force and, beyond that, some advanced thinking on an international court.

Those are subjects which you and I had a chance to talk about earlier, and I regret that I cannot be here for the balance of the session. This has been added late in the scheduling process, and I commend the Chairman and the ranking member for moving ahead with these important nominations, and for the judiciary and the Marshals Service as well.

The sparse attendance here this afternoon does not reflect a lack of concern of the Judiciary Committee for these important positions, but it is a Friday afternoon, and it is a very innervating Friday afternoon, with the impeachment proceeding which we had today.

We are hearing the nominating procedures for two Federal judges and we just went through a really extraordinary, historical event in the Senate. So the sparse attendance does not reflect a lack of concern over these positions.

I especially wanted to convey to Mr. Ayer what I view to be the great importance of his position and my intention to work closely with him in moving toward real action on many of the problems facing the administration of justice in this country.

Thank you very much, Mr. Chairman.

Senator SIMON. Thank you, Senator Specter, and I can just underscore the fact that we did have the impeachment vote this morning and we faced the choice of either postponing this whole thing another week or moving ahead this afternoon, and I felt it was better to move ahead this afternoon. I appreciate your cooperation, too, Senator Thurmond, on that.

Senator **Thurmond**. Mr. Chairman, to save time, I ask unanimous consent that my statement highly endorsing Mr. Ayer be placed in the record.

Senator **Simon**. It will be entered in the record.

[The statement of Senator Thurmond follows:]

STATEMENT BY SENATOR STROM THURMOND (R-SC) BEFORE THE SENATE JUDICIARY COMMITTEE ON THE NOMINATION OF DONALD B. AYER, OF VIRGINIA, TO BE DEPUTY ATTORNEY GENERAL, OCTOBER 20, 1989, 10:00 A.M., SD-226

MR. CHAIRMAN:

THIS MORNING WE BEGIN THE CONFIRMATION HEARING OF DONALD AYER, PRESIDENT BUSH'S NOMINEE TO BE DEPUTY ATTORNEY GENERAL.

MR. AYER'S BACKGROUND AND EXPERIENCE HAVE PREPARED HIM WELL FOR THE POSITION TO WHICH HE HAS BEEN NOMINATED. HE RECEIVED HIS BACHELOR'S DEGREE FROM STANFORD UNIVERSITY IN 1971, AND IN 1973 GRADUATED FROM HARVARD UNIVERSITY WITH A MASTER'S DEGREE. IN 1975, HE EARNED A LAW DEGREE FROM HARVARD LAW SCHOOL.

MR. AYER WAS A LAW CLERK FROM 1975-1976 FOR JUDGE WILKEY ON THE UNITED STATES COURT OF APPEALS IN THE DISTRICT OF COLUMBIA, AND FROM 1976-1977, HE SERVED AS A LAW CLERK TO JUSTICE REHNQUIST ON THE SUPREME COURT. HE WAS AN ASSISTANT UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF CALIFORNIA FROM 1977-1979. HE THEN JOINED THE LAW FIRM OF GIBSON, DUNN & CRUTCHER. FROM 1981-1986, HE WAS THE UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF CALIFORNIA. MR. AYER JOINED THE OFFICE OF THE SOLICITOR GENERAL AS THE PRINCIPAL DEPUTY SOLICITOR GENERAL IN 1986 WHERE HE SERVED FOR TWO YEARS. PRESENTLY, MR. AYER IS A PARTNER WITH THE LAW FIRM OF JONES, DAY, REAVIS & POGUE.

MR. AYER, YOU ARE TO BE CONGRATULATED ON YOUR NOMINATION TO THIS IMPORTANT POSITION AND I LOOK FORWARD TO HEARING YOUR TESTIMONY.

Senator **SIMON**. We thank you very, very much.

Mr. **WYDEN**. Thank you, Mr. Chairman, very much.

Senator **SIMON**. Our first nominee is Mr. Plager. Mr. Plager, if you will raise your right hand, do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **PLAGER**. I do.

Senator **SIMON**. Mr. Plager, I note that part of your background is having been a professor at the University of Illinois. I think that that is an exceptionally fine background to have.

TESTIMONY OF S. JAY PLAGER, BLOOMINGTON, IN, TO BE U.S. CIRCUIT JUDGE FOR THE FEDERAL CIRCUIT

Mr. **PLAGER**. Thank you, Mr. Chairman.

Senator **SIMON**. How would you describe yourself in terms of what you bring to the bench? That is a very general, broad question.

Mr. **PLAGER**. And it challenges me to overcome my natural modesty, Mr. Chairman, and give you an answer that I think will be useful to you. I have, I think, devoted much of my life to the study of the law, to writing about the law, and to teaching the law—the work of the trial courts, the work of the appellate courts, how courts function. Approximately, I suppose, 20 years of my life has been devoted to that activity, including the 13 years at the University of Illinois.

I have spent part of my life in the administration of law and education, where I learned a good bit about working with colleagues and State legislators and government officials of all kinds, and being open and responsive to people's concerns, and in the last few years have devoted my time to working here in the Federal Government with the Congress and with the executive branch.

And I suppose I would describe myself, then, as a person who has been very fortunate in having a wide range of experiences, largely law related and very much concerned about the process of adjudication and the rule of law and the work of courts.

Senator **SIMON**. If I were just to give a superficial glance at your record and say what is your major strength and your major weakness as a nominee, a major strength is you bring something that very few nominees do, and that is an understanding of new technologies, and I think that is going to be very important for the courts in the future.

If I were to say what appears to be a weakness—and I would be interested in your response—is that your experience is heavier on the academic side than in trial work. Does the lack of trial experience—does that present a barrier in any way to your being a good judge?

Mr. **PLAGER**. I don't think so, Mr. Chairman, for this reason. My experience, my work, my studies have developed in me a very great deal of respect for the work of trial judges and factfinding bodies, and the concerns and problems of litigants because, basically, that has been what I have spent most of my life working with.

And while I appreciate the fact that people who work in trial courts develop certain skills in that, I think those skills are somewhat different from the skills that are generally found, for example, at the appellate level, both by practitioners and judges.

And while they are both very valuable skills, I don't think either is a prerequisite for the other, so that I don't feel particularly handicapped by not having had an extensive trial court experience. I think the important thing is to be sensitive to and understand the role of the trial courts and their problems and the problems of litigants in the trial when you review those problems at the somewhat removed appellate level.

Senator SIMON. Senator Thurmond.

Senator THURMOND. Thank you very much, Mr. Chairman.

Mr. Plager, I agree with you on that position. You have been appointed to the circuit court of appeals. We had a situation like that a few years ago where a lawyer had had very little, if any, trial experience. But the appellate courts are not trial courts, and what they do is write decisions. That gentleman is on the Fourth Circuit Court of Appeals now.

I think your experience in 4 years as law teacher at the University of Florida, 15 years teaching law at the University of Illinois, 9 years as dean of the Indiana University School of Law, and then a year with the Department of Health and Human Services and a year with the Office of Management and Budget—and you are now with the Office of Management and Budget, I believe, at this time. You have had tremendous experience and I think you are well qualified to be a circuit judge. If you had been appointed as a district judge, there might be some question on that.

Mr. Plager, upon reviewing your record, I know that you have been a professor of law for 25 years in all, is that correct?

Mr. PLAGER. That is correct, yes, sir, roughly.

Senator THURMOND. And I have recited the different positions you have held. Do you feel that experience will be helpful to you to be on the circuit court?

Mr. PLAGER. Yes, sir, I do. For somewhat the same reasons I was pointing out to the chairman, I think that range of experience both as someone who has studied and taught judicial process and more hands-on experience in recent years as a dean and working in the Federal Government, has given me a marvelous breadth of opportunity and experience that I think will be particularly useful in a court such as the Federal circuit.

Senator THURMOND. Now, as a judge for the Federal circuit, you will be reviewing the decisions of judges from the district court, the Claims Court, and the International Trade Court. What criteria do you intend to use in reviewing those decisions and trial records?

Mr. PLAGER. I think an appellate court—it is my understanding, Senator Thurmond, that the appellate court must give due deference to the work of the trial court, and in regard to factfinding and factual determinations in the trial court, I think an appellate court must be very chary about overruling factual determinations.

And I think the legal standard is generally stated as one of error, clear error, on the part—clearly erroneous factfinding by the trial judge. And it seems to me that that is a proper standard, and the trials that you have mentioned should be, of course, and must be given that deference.

Senator THURMOND. That is all the questions I have. I think you are well qualified and I hope we can get you confirmed in short order.

Mr. PLAGER. Thank you, Senator.

Senator THURMOND. Thank you, Mr. Chairman.

Senator SIMON. We thank you very much, Mr. Plager, and wish you the best.

Mr. PLAGER. Thank you, Mr. Chairman.

Senator SIMON. Justice Lindberg, do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Justice LINDBERG. I do.

Senator SIMON. Let me first of all, Senator Thurmond, mention that I have a slight conflict of interest. I have known Justice Lindberg for—when were you elected to the legislature?

TESTIMONY OF HON. GEORGE LINDBERG, CRYSTAL LAKE, IL, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS

Justice LINDBERG. 1967, I was sworn in.

Senator SIMON. OK, so I have known him 22 years, and I have found him to be a person of ability and a person of integrity, and that is what we are looking for.

Let me ask the question that I asked Mr. Plager, a question that could come up, and that is while you have a distinguished record on the Illinois Appellate Court, your trial court experience is not as strong. What you have been nominated for is a trial court position.

Any comments on your part?

Justice LINDBERG. Well, Mr. Chairman, when I undertook to seek the appointment to this court, I had to make that same inquiry of myself, and let me say that, candidly, I regret that I don't have a stronger litigation experience. My litigation has been primarily in the appellate arena and, of course, I might say, autopsying trials, looking for judicial error and litigator error.

And so I don't believe it will be a handicap. I do wish I had some additional trial experience, but I don't think it will be a handicap.

Senator SIMON. I have never heard that phrase, "autopsying trials," for an appellate court position.

Justice LINDBERG. Well, it doesn't get very bloody, but——

[Laughter.]

Senator SIMON. One of the things that is suggested by the Bar Association is pro bono work by members of the bar. Have you done any of that?

Justice LINDBERG. Of course, for the last 11 years, I would not be permitted to do that in my position as a justice of the Appellate Court. Prior to that, as Deputy Attorney General, much of the work that I did, in a sense, is pro bono because we were trying to help people with environmental issues that they are concerned with, or particularly in the area of consumer fraud—Chevy engines in Oldsmobiles and that type of problem, scams involving wristwatches that don't exist, and that type of thing.

And these are generally people, frankly, who could not afford to hire a lawyer to undertake these kinds of recoveries. So the majority of my work was in that context while I was Deputy Attorney General.

As Comptroller, there you have a real, genuine opportunity to help people, and the Treasurer at that time, Alan Dixon, who was just here, and I worked very closely because when you are issuing 50,000 checks a day, some of them go astray. They are either stolen or they are lost, and frequently these are checks to people who need that money to buy milk and put it on the table.

So I know both in Alan's case and in my case, we did everything we could to expedite the cutting of a new warrant, a new check, and getting it delivered—flown, as a matter of fact—to the individual in need, whether it be a retired teacher or a welfare recipient.

Those are—I don't know that you would call that pro bono, but it was the type of thing that I was able to do in my official positions, and as a lawyer I think I indicated in my Senate questionnaire that there were many instances, one in particular, where I was able to help disadvantaged people.

Senator SIMON. And I would just add the record does indicate that, and while I expect you on the bench to administer the law, I also want someone there who has evidenced some compassion for the less fortunate.

Senator Thurmond.

Senator THURMOND. Thank you very much, Mr. Chairman.

Judge, I congratulate you on your appointment and I just have a couple of questions here. Do you foresee any difficulty in the transition from your present position as a State level appellate judge to that of a trial judge at the Federal district level?

Justice LINDBERG. I think there will be some transition slowness. If I were to equate it, and I have had an opportunity to think about it, I would probably say perhaps two or three months before I got the same kind of feel for the trial practice that I have for the appellate litigator.

I would say this, Senator, that I have really spent 11 years looking over everybody else's mistakes, trial mistakes. So I think, frankly, it is a unique position to come to the trial court from.

Senator THURMOND. In a way, you will kind of be coming down, won't you? You have been up there reviewing other people's cases. Now, they will review your cases.

Justice LINDBERG. Well, that is one of the reasons I want the position. I need that type of invigoration.

Senator THURMOND. I was a State trial judge once, the highest trial judge in the State, and I have never enjoyed work any more than that because I love the courtroom. And I think any lawyer who really likes to try cases would rather be a trial judge than an appellate judge. I think you will enjoy that work.

Justice LINDBERG. Thank you.

Senator THURMOND. There is frequently a conflict between the deeply felt constitutional views of a Federal judge and the constraints of judicial precedent. How would you resolve the tension between personal jurisprudence and precedent?

Justice LINDBERG. Well, Senator, I really appreciate that question because it is something that I feel very strongly about, and particularly as an appellate judge, I feel a sincere responsibility to follow precedent. I think that is the role of the appellate judge relative to Supreme Court decisions and relative to the statutes passed by the legislature, and certainly that is true of a district court judge.

Senator **Thurmond**. It is probably the only safe way you can go as a trial judge, isn't it?

Justice **Lindberg**. As far as I am concerned, it is the only way to go.

Senator **Thurmond**. Now, I want to mention this to you. I don't think you are the kind of man who would do it anyway, but I have seen some Federal judges embarrass lawyers, jurors, and witnesses. I have seen them yell and lose their temper in the courtroom. I have seen them be discourteous. There is no excuse for that.

Justice **Lindberg**. I absolutely agree. First of all, a judge has all the power he could ask for. Why indulge in that?

Senator **Thurmond**. Exactly. He has the power of life and death. He has all the power in the world. A Federal judge has more power than anybody I know, and I am sure you will handle that power in a way that will be compassionate with people and courteous to people, and I think that is very important.

Justice **Lindberg**. I intend to do so.

Senator **Thurmond**. Now, another thing I wanted to mention to you as a district judge is judicial activism. Some Federal district judges have taken over hospitals, school districts, and prisons. They have gone into various fields of activity.

It is a legislator's job, like ours, to make the law; the executive branch's is to execute that law. The judge interprets the law, and when they go taking over these State institutions, that really gets it away from the local people and it isn't right. It can be handled without doing that.

I just wanted to mention that to you because judicial activism sometimes results in a lot of embarrassment, hardship and unnecessary bad results.

Justice **Lindberg**. Well, Senator, I will just say that the nodding of my head up and down means I agree with you for purposes of the record, and I do agree with you.

Senator **Thurmond**. Thank you very much. I wish you well on the court.

Justice **Lindberg**. Thank you.

Senator **Thurmond**. I see you have a very lovely wife and pretty daughters, and I am sure they are a big asset to you.

Justice **Lindberg**. They have been. Thank you.

Senator **Simon**. Let me just add that we want to insert in the record letters from J. William Braithwaite, Justice John Sullivan, and Judge Richard Mills, all of whom have written in behalf of the nominee.

[The letters referred to follow:]

ARNSTEIN & LEHR
7500 SEARS TOWER · CHICAGO, ILLINOIS 60606-6472
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J. William Braithwaite
BARRINGTON OFFICE

October 19, 1989

VIA FAX

The Honorable Joseph R. Biden, Jr.
Chairman,
United States Senate Committee on the Judiciary
221-Russell Senate Building
Washington, D.C. 20510

Dear Senator Biden:

I understand that tomorrow you will be considering the confirmation of an eminent Illinois jurist, Justice George W. Lindberg of the Illinois Appellate Court.

I am a practicing attorney who has known Justice Lindberg for approximately thirty years and throughout the career of Justice Lindberg, I have been impressed with his ability and integrity. He will bring to the United States District Court a rich background of experience, including private practice in a leading firm in Crystal Lake, Illinois, and eleven years of Appellate Court experience. Justice Lindberg has been considered by those who practice before the Appellate Court, as I do occasionally, as one of the outstanding Justices of that Court--and I say that with a background of someone against whom he decided a case!

In my opinion, Justice Lindberg's Appellate Court experience, where he has decided cases involving almost every imaginable legal issue, will be invaluable as a Trial Court Judge. Some of our Federal judges have gone on the bench with a background of trial experience which is often quite limited in scope, whereas Justice Lindberg will bring to the Federal bench greater experience with the rules of evidence, as well as a broad knowledge of almost every legal principle, than can possibly be obtained in a lifetime of private practice.

Respectfully yours,

J. William Braithwaite

JWB:grp
BAR263-07(11)

cc: Senator Strom Thurmand

JOHN J. SULLIVAN
111 WEST WASHINGTON STREET
CHICAGO 60602

October 10, 1989

Honorable Joseph Biden
Chairman, Committee on Judiciary
United States Senate
Washington, D.C. 20515

RE: JUSTICE GEORGE W. LINDBERG

Dear Senator Biden,

Justice George W. Lindberg of the Appellate Court of Illinois, who is under consideration for appointment to the U.S. District court for Northern Illinois and will soon appear before the Judiciary Committee is, in my opinion, eminently well qualified for service on that court.

I have taken the liberty of giving my opinion because of my belief that I may be the only person or, in any event, one of only a few persons, in this area having the professional background to evaluate fairly the qualifications of Justice Lindberg.

Licensed in 1937 I was an active trial lawyer until 1973 handling many hundreds of legal matters in the State and Federal Courts, both jury and non-jury, with considerable success, not only materially, but also in attaining the respect of my contemporaries as evidenced by my election to the presidencies of both the Chicago Bar Association and the Illinois Trial Lawyers Association, as well as to Fellowships in both the American College of Trial Lawyers and the International Academy of Trial Lawyers.

In 1973 two justices of the Illinois Supreme Court informed me that their court desired to appoint an experienced trial lawyer to the Appellate Court to fill a vacancy and I was asked to consider such an appointment. I accepted and was appointed in 1973. Then in 1974 I was slated by the Democratic Party and elected to that court, serving until my retirement in 1988.

Senator Biden, although Justice Lindberg is held in unquestioned high regard by the legal profession in Illinois, I have learned that while a "substantial majority" of the ABA Committee found him qualified, a minority expressed concern about his lack of trial experience. I believe that such concern is unjustified and indicates a lack of knowledge concerning the work of the Appellate Court.

In his 11 years on the Illinois Appellate Court Justice Lindberg authored hundreds of opinions and participated in the hundreds of opinions of the other members of their three-justice panel. This work entailed the examination and review of the trial records in those cases and, as you know, their decisions guide and control the work of the trial judges and the attorneys appearing before them. This is particularly so in Illinois where approximately 94% of the appeals end in the Appellate Court.

Senator Biden, I am the only person in this area who served as an Appellate justice and who is also a Fellow of the American College of Trial Lawyers and the International Academy of Trial Lawyers, and it would thus appear that I may be the person best qualified by experience to suggest to you that there is no person better trained to sit as a trial judge than one who for many years has reviewed the work of trial judges, such as Justice Lindberg has done these past 11 years.

Please accept my apology if this letter is an intrusion on your busy schedule, but my interest in the best possible judiciary compelled me to express my opinion in the hope that the District Court here will not be deprived of such an outstanding jurist as Justice Lindberg has been and will continue to be.

Honorable Joseph Biden
October 10, 1989
Page 3

Thanks in advance for the courtesy of your consideration of my comments.

Sincerely,

JOHN J. SULLIVAN

JJS:DSR

cc: Hon. Strom Thurmond
Committee on Judiciary
United States Senate
Washington, D.C. 20515

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
U.S. COURTHOUSE
SPRINGFIELD, ILLINOIS 62701

RICHARD MILLS
JUDGE

(217) 492-4340
FTS 955-4340

October 11, 1989

THE HONORABLE JOSEPH R. BIDEN
Chairman
Committee on the Judiciary
United States Senate
221 Senate Russell Office Building
Washington, D.C. 20510-0802

Dear Mr. Chairman:

The President recently nominated my good friend, Justice George W. Lindberg, to be a United States District Judge, Northern District of Illinois, and I understand that your committee will conduct a hearing on that nomination in the near future. If it is not inappropriate, I would simply like to relay my strong support for Judge Lindberg's confirmation.

George and I have been friends for 20 years, encompassing the entire time that he was State Representative, State Comptroller, Deputy Attorney General, and the over 10 years he has served on the Appellate Court of Illinois. George's integrity and ethics are simply above reproach.

Having served on the Illinois Appellate Court myself for nearly nine years before taking this bench, I had extensive contact with Judge Lindberg. It is in that particular context that I am directly acquainted with his high degree of professional and judicial competency and am familiar with the fact that he has reviewed several thousand trial court records in the course of his appellate service. He is highly regarded by the bar and bench in Illinois -- trial and appellate -- for solid and scholarly work.

I wish him well before your committee, which was so gracious to me in July 1985. And I will welcome Judge Lindberg as a superlative colleague on the federal trial court.

Thank you for the opportunity of conveying these thoughts, and with every best wish, I remain

Respectfully yours,

Richard Mills

RICHARD MILLS
United States District Judge

RM/lrb

cc: Hon. Strom Thurmond

Senator Simon. We went through a very unpleasant thing this morning in impeaching a Federal judge where the judgment of the Senate was that he had been involved in a bribery scheme. Having George Lindberg before me, I don't even have any shadow of a doubt that he ever would be involved in anything like that, and it is a good feeling.

Justice Lindberg. Mr. Chairman, I think you might remember that this might be deja vu all over again because about the time you and I started in government, we had a similar experience with the Illinois Supreme Court, and I was heavily involved with that, so we have special experience in that regard.

Senator Simon. Thank you very much.

Justice Lindberg. Thank you.

Senator Simon. We wish you the best.

Justice Lindberg. Thank you very much.

Senator Simon. Mr. Donald Ayer, if you could stand and raise your right hand, do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Ayer. I do.

Senator Simon. Mr. Ayer, one of the things that is changing under Attorney General Thornburgh is that the position of Associate Attorney General is being wiped out. That person formerly shared the responsibilities that you would have.

What practical difference is that going to make in terms of the administration of the office?

TESTIMONY OF DONALD AYER, McLEAN, VA, TO BE DEPUTY ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. Ayer. Well, I think it makes the deputy's job, at least on paper, and probably more than on paper, a bigger job than it was before because it places in the hands of that office essentially supervision of all of the offices, boards, divisions, and bureaus of the Department, rather than having them be divided among two different positions in terms of the oversight function.

I think, on balance, it is an appropriate reorganization because I think in many respects it will streamline and make more manageable the overall structure of the Department. It doesn't probably mean that there is less work to do, but I think it may, in fact, ultimately make it easier to prioritize and to get a handle on the overall Department rather than having the oversight divided in a way that may make it more difficult to see interactions between different parts of the Department.

Ultimately, my own responsibilities—I think I am well aware, in principle, of what they are. I think, ultimately, they will turn out to be an evolving phenomenon that will grow out of a close working relationship with the Attorney General.

So I don't feel today really in a position to speak with authority on ultimately how this position, should I be confirmed, I will be able to perform it compares with the way it has been conducted under previous deputies.

Senator Simon. You are going to be in a position to have great influence in terms of policies of the Justice Department, of people selected for Federal courts, for the U.S. Supreme Court.

One of the major responsibilities of the Department of Justice is to defend civil rights and civil liberties. What can you say to assure me that you are going to be in there championing those causes, what in your background?

Mr. AYER. Well, I have spent, I guess, 9 of the last 12 years in government service in the Justice Department, in different positions in the Justice Department. I didn't, actually, I think, necessarily plan on doing that when I left law school, and the reason that it seems to have worked out the way it has is that I personally get a great deal of satisfaction out of serving objectives which are somewhat broader than particular objectives of particular individuals or institutions.

I like being in positions where you can ask the sort of commonsense question, or at least a lot of the time you can ask the commonsense question, what is the right thing to do here. And I have found that to be sort of what was called for an assistant U.S. attorney when you were making decisions about whether to prosecute and then whether to settle a case, on what terms, and in civil litigation where the Government, for example, is being sued in tort situation and you have to make a judgment whether to defend it and on what terms.

You know, those are judgments that are not easy judgments to make, but I, from the experience of being involved in them, have come to a strong view that a government lawyer's job includes—of course, it includes—perhaps most importantly it includes being an excellent lawyer and exercising common sense and being aggressive and diligent.

But it also very substantially includes the need to be fair, to be compassionate, to focus on what, in a situation, calls for different treatment than sort of simply going by the book and applying a particular law to what appears, at least at the beginning, to be a particular set of facts.

So I feel that people who have dealt with me throughout the time I have been in Government, and perhaps other times as well, I think would say that I have tried pretty consistently to be fair, to look at what really is happening and not to try to think in terms of scoring points or necessarily winning victories as the ultimate objective.

The ultimate objective, I think, really, of the United States as a litigating institution, if you will, is, as Justice Sutherland said in *Burger* v. *United States*, the United States wins when justice is done.

Senator SIMON. I am searching for something a little more specific, if that is possible, and it can go back to your student days—anything to indicate that you have championed the cause of those who are less fortunate.

You are going to be part of a handful of people who are going to sit around some afternoon in the Attorney General's office and say do we enter this amicus brief in behalf of some litigants who are before the U.S. Supreme Court on a fundamental civil rights or civil liberties case. I can't tell you what that case is going to be, but I would like to have the feeling that the new Deputy Attorney General is somebody there who has some heart and compassion as that is being weighed.

Mr. AYER. You are looking for something sort of specific?

Senator SIMON. Yes.

Mr. AYER. Well, a week ago Monday, I guess, and for a couple of weeks prior to that I worked in preparation for an argument in Houston on behalf of an indigent convict sentenced to death by the Texas State courts, arguing in Federal district court, I think correctly, frankly, that the procedures set out in the U.S. Supreme Court's decision this last spring in *Penry* v. *Linnow*—those procedures had not been met, and that, in fact, his sentence of death should be set aside.

I did that as part of our law firm's pro bono activity, and I did it with a sense that that is one of the obligations that lawyers have, and really without any reluctance whatsoever, believing as I do that in this instance the position was well taken.

Senator SIMON. I thank you. That is what I was looking for.

Mr. AYER. OK.

Senator SIMON. Thank you, and I appreciate that.

Senator Thurmond.

Senator THURMOND. I think you have answered him well.

Mr. Ayer, from your experience I think you are well qualified to fill this position. You have been a law clerk, I believe, to two judges. You have been an assistant U.S. attorney, U.S. attorney, and you have practiced law with two different firms. You have had considerable experience which will be very helpful to you, I think, in this new work.

Now, traditionally, the Deputy Attorney General has been responsible for oversight of the day-to-day operations of the Department of Justice. Would you tell the committee what your new duties will be under the Attorney General, and have you, in fact, discussed the matter with Attorney General Thornburgh?

Mr. AYER. Well, I have spoken in only fairly general terms with the Attorney General in terms of precise duties. He has made it clear to me that he wants me to play the traditional role of overseeing the day-to-day operations.

He has also indicated to me that in a couple of areas he would like me to be involved starting as soon as I am able to come on board, assuming I am confirmed. One of those areas is the forfeiture program relating to forfeitures in connection with drug offenses and that sort of thing. Another area is the Organized Crime Drug Enforcement Task Force Program, which was put in place, I think, back in the mid-1980's.

Both of those programs, I think, are programs that the administration and Attorney General Thornburgh want to give a very high priority to, and I think he sees it as useful to have me be involved in working with others within the Department to try to give them that kind of priority.

He also has indicated that I will play a role, although we haven't talked specifically about it, in the judicial selection process, and has led me to believe that there will be substantial additional responsibilities as we work together and sort of the situation evolves.

But, right now, I am not too clear on the specifics beyond that, although I must say as I think about the prospect of being, quote, responsible for the day-to-day operations of the Department, I find it somewhat overwhelming and I would be interested to see how that develops because I think there is a lot to be done there.

Senator THURMOND. You have a terrific responsibility. The things you mentioned are all very important, any one of which could take the full time of any man. So I am not too sure your wife is going to see as much of you as she would like to in the future.

Mr. AYER. Well, I have wondered that myself, Senator.

Senator THURMOND. But you give those children reasonable time, no matter how busy you are.

Mr. AYER. Excuse me, Senator Thurmond.

Senator THURMOND. Give those children reasonable time; it doesn't matter how busy you are.

Mr. AYER. I always try to, and I hope to continue to.

Senator THURMOND. You will take an active part in the selection process of nominees for the Federal bench, you said.

Mr. AYER. I believe so.

Senator THURMOND. I think that is very important. Incidentally, what criteria occurs to you that you would consider in doing that?

Mr. AYER. Well, I think the most important criteria from my own perspective is judicial temperament, someone who has the perspective of dealing fairly and evenhandedly with what are often other people's problems brought before him.

I believe very strongly myself—well, I believe first of all, as I guess everyone does, in the concept of the rule of law. And to me, that means that you have got to have judges taking an approach which is restrained in terms of interpreting the law.

If judges become free agents who are able to more or less make it up as they go along, or to any significant degree do that, I think we really lose the strain that holds democracy together, which is the legislature enacts and the courts apply and interpret. And I think much needs to be done to make sure that when judges are selected, they are people who don't see themselves as making up the law, but rather as applying it.

Finally, and maybe most importantly, although the others are perhaps equally as important, I think pure smarts and legal ability are absolutely critical. So many of the problems that come up today, I suppose, and have in the past as well, but certainly the ones that I see in the work I do are problems that often have no easy answers.

And what is required is someone who has the mental horsepower and the willingness to sit down and do the work in order to figure out what the most appropriate answer is, and I think that is no small screening device when it comes to selecting judges.

Senator THURMOND. I think the American Bar Association's criteria for selecting Supreme Court Justices is probably as good a criteria as one can obtain. First is integrity. Without integrity, no man ought to be in public office, or woman, either. Next is professional qualifications, and the third is judicial temperament. I believe those are the elements and criteria the American Bar considers for Supreme Court Justices, and I think you have covered those in what you have had to say.

I have no further questions. I hope you enjoy your work there as the Deputy Attorney General and I wish you well.

Mr. AYER. Thank you, Senator Thurmond.

Senator THURMOND. And don't forget your wife and children.

Senator SIMON. If I could just add one question on top of what Senator Thurmond was asking in terms of judges, let us say you have a Supreme Court nominee up. Do you think it is proper to ask that potential nominee, how would you rule on this kind of an issue or that kind of an issue?

Mr. AYER. You are speaking for the Justice Department to ask that question——

Senator SIMON. That is correct.

Mr. AYER [continuing]. As opposed to the Senate asking that question?

Senator SIMON. Yes.

Mr. AYER. It is not the way.

Senator SIMON. Let me just say I think it would be improper for the Senators to ask that question, too.

Mr. AYER. It is not the way I would do it, certainly. I think you have to judge a person—you have to give them a little more room and you have got to judge them as a whole person, and I think you do that by talking with them, by getting a feel for who they are and where they are coming from.

I think if you start to try to create an automaton who you are going to put in as a judge and he is going to do what you told him to, you are going to end up with something you don't want, and you are also not going to get probably what you wanted on that issue anyway. And I would never try to do something like that.

Senator SIMON. OK, we thank you.

Christopher, should I vote for your father?

Mr. C. AYER. Yes.

Senator SIMON. OK, all right. [Laughter.]

Senator THURMOND. He said yes; he bowed his head.

Senator SIMON. Thank you very, very much.

[Letter of support and response to questions follows:]

ROBERT T. MATSUI
THIRD DISTRICT, CALIFORNIA

COMMITTEE ON
WAYS AND MEANS

SUBCOMMITTEES
TRADE
HUMAN RESOURCES

WHIP AT LARGE

Congress of the United States
House of Representatives
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REMARKS OF THE HONORABLE ROBERT T. MATSUI

IN SUPPORT OF DONALD B. AYER AS DEPUTY ATTORNEY GENERAL

Senate Judiciary Committee

October 20, 1989

Mr. Chairman, it gives me great pleasure to be able to express my support for Donald B. Ayer as a nominee for the position of Deputy Attorney General, U.S. Justice Department.

It would be difficult to imagine a candidate more qualified than Mr. Ayer. He has proven his intelligence and capability at nearly every level of our nation's legal system. After graduating from Harvard Law School, Don served consecutive Law Clerkships with Honorable Malcolm Wilkey, U.S. Court of Appeals for the District of Columbia, and Honorable William Rehnquist, Supreme Court of the United States. I first became familiar with Don in 1977 when I was serving in the Sacramento City Council and Don became the Assistant U.S. Attorney for the Northern District of California. My formal association with Don, however, began in 1981. I was a second-term Congressman representing Sacramento when he came to California's capitol city as the United States Attorney for the Eastern District of California.

The accomplishments he brought to that position at the tender age of 32 were remarkable; more impressive, however, were the initiatives he introduced and promoted during his tenure there. He created and developed a Law Enforcement Coordinating Committee which substantially improved what had been a piecemeal approach to law enforcement among federal, state and local authorities. He also launched a drug demand reduction program in the Sacramento area which consisted of a week-long day camp featuring drug education, sports and other activities. That program, which has flourished even in his absence, will undoubtedly prove to be Don's indelible mark on the Sacramento community.

Everyone I know who has come in contact with Don Ayer over the years has found him to be an extremely capable man with the ambition, desire and ideals to have a bright future in public service. Today those projections appear to be coming into focus. I commend him to the members of the Committee as an individual with the intelligence, tenacity, and commitment to justice. I strongly urge my Senate colleagues to approve his nomination to the Department of Justice as Deputy Attorney General.

Very truly yours,
Robert T. Matsui
ROBERT T. MATSUI
Member of Congress

October 24, 1989

Honorable Joseph R. Biden
Chairman
Senate Judiciary Committee
United States Senate
Washington, D. C. 20510

Dear Chairman:

Enclosed are the responses of Donald B. Ayer to the written questions of Senator Metzenbaum in connection with his nomination as Deputy Attorney General.

If we may be of any further assistance please let us know.

Sincerely,

Carol T. Craw

Carol T. Crawford
Assistant Attorney General

Enclosure

cc: Honorable Strom Thurmond

Answers of Donald B. Ayer, Nominee for Deputy Attorney General, to Questions by Senator Metzenbaum

1. THE WASHINGTON POST RECENTLY REPORTED THAT MORE THAN 37,000 PEOPLE CONVICTED OF FEDERAL CRIMES AND SENTENCED TO PAY FINES AND RESTITUTION OWE THE GOVERNMENT MORE THAN $646 MILLION. MOST OF THESE PEOPLE I WOULD DESCRIBE AS WHITE COLLAR CRIMINALS, WHO I BELIEVE ARE NOT BEING ADEQUATELY PURSUED BY DOJ. WHAT DO YOU INTEND TO DO ABOUT THIS?

ANSWER:

The United States Attorneys have identified the collection of criminal fines as among their highest priorities. The Department has emphasized to the U.S. Attorneys the importance of ensuring that criminal fines imposed are both collectible and collected, and in the past year has sponsored a number of training seminars for criminal prosecutors on fine collection.

The Department has available to it a number of new tools for fine enforcement, including the use of levy and garnishment powers available to the Internal Revenue Service under the Internal Revenue Code. The Department also participates in the Internal Revenue Service tax refund offset program. This year it is anticipated that over 20,000 criminal fine debtors owing approximately $170 million will be eligible to be referred to this program. The U.S. Attorneys are presently implementing a nationwide fine enforcement effort that includes a one-time demand initiative, authorized by the Criminal Fine Improvements Act of 1987, offering criminal debtors an inducement to pay the total principal balance on their criminal debts in exchange for waiver of interest and penalties. Some 30,000 criminal fine debtors owing approximately $700 million have been contacted. In the first week of the program over $100,000 was recovered.

The Bureau of Prisons Inmate Financial Responsibility Program has an ongoing program whereby inmates are encouraged to voluntarily pay their fines, as well as other court-ordered obligations such as child support, from money they earn while in prison. Over 10,500 federal inmates participate in this program, which collects approximately $1 million each month.

The Department supports enactment of the Federal Debt Collection Procedures Act currently before the Congress, which would create a uniform federal system for the collection of debts owed to the United States. This would eliminate the need for the United States to rely on the debt collection laws of the state where the debtor is located, which is a severe problem in those states which have become "debtors' havens."

Finally, the Department is working with the federal judiciary to study the issues and problems created by the current system of imposition and collection of criminal fines. A task force established with the Administrative Office of United States Courts will examine all aspects of the criminal fine collection problem and coordinate corrective actions between the two branches of government. The Department is also working closely with the Administrative Office of U.S. Courts on the development of a new criminal fine accounting system.

The collection of criminal fines and restitution is an important priority of the Department of Justice.

2. THE LAST TIME THE JUSTICE DEPARTMENT STUDIED FEDERAL WHITE COLLAR CRIME, IT FOUND THAT 56% OF WHITE COLLAR CRIMINALS WHO WERE CONVICTED AND SENTENCED GOT PROBATION WITH NO PRISON TERM AS COMPARED TO ONLY 31% FOR NON-WHITE COLLAR CRIMINALS. HOW WOULD YOU EXPLAIN THIS SIGNIFICANT DIFFERENCE IN TREATMENT? THIS STUDY WAS BASED ON CONVICTIONS IN 1985. WILL YOU HAVE THE JUSTICE DEPARTMENT UPDATE THIS STUDY?

ANSWER:

The Bureau of Justice Statistics study to which you are referring found that 40% of convicted white collar criminals were sentenced to incarceration, as opposed to 54% of convicted non-white collar criminals. Fifty-six percent of white collar criminals were sentenced to probation only, and 4% to a fine only; 31% of non-white collar criminals were sentenced to probation only, and 15% to a fine only. It is difficult to draw many conclusions from these statistics without focusing on the specific characteristics of the cases and offenders involved. I do believe, however, that the statistics reflect the fact that white collar criminals often have less serious prior criminal records than offenders of other kinds, and also reflect an historic reluctance on the part of many judges to impose prison terms for fraud and related offenses.

While I have not been involved in criminal prosecution since before the Sentencing Guidelines went into effect, I know that the Commission recognized and sought to deal with this problem by increasing the presumptively appropriate sentences for various categories of white collar crime over those previously imposed. It remains to be seen whether the Guidelines in their present form will result in sentences of the appropriate severity for serious fraud and related offenses, and statistics collected in order to evaluate the operation of the Guidelines should prove informative. When such data becomes available, the Department will carefully evaluate it.

3. I BELIEVE THAT THE WEALTHY CRIMINAL FACES FAR LESS RISK OF SERVING SERIOUS JAIL TIME WHEN HE BREAKS THE LAW, THAN THE POOR AND DISADVANTAGED. DO YOU THINK THIS IS FAIR AND WHAT DO YOU THINK CAN BE DONE TO MAKE THE JUSTICE SYSTEM WORK MORE EVENHANDEDLY?

ANSWER:

As United States Attorney, I was frustrated on a number of occasions when perpetrators of serious white collar crimes received what I viewed as disproportionately light sentences. As discussed in answer to Question No. 2, the Sentencing Guidelines can be expected to produce heavier sentences for white collar offenses than were imposed in the past.

Additionally, the government must continue to stress the seriousness of various fraud offenses, both in general and in the context of specific cases, and to devote the necessary resources to their investigation and prosecution. Due to the complexity of these offenses, and to the difficult investigative path that often must be followed to develop a prosecutable case, substantial resources and expertise must be brought to bear. As an outside observer, I have been impressed with the steps that Attorney General Thornburgh has taken during the last fourteen months to strengthen the Department's efforts in the area of bank fraud, securities and commodities fraud, defense procurement fraud, and HUD fraud. I would hope to play a part in enhancing the efficiency and effectiveness of such federal enforcement efforts.

4. DO YOU THINK IT IS FAIR AND/OR APPROPRIATE THAT THE WEALTHY CRIMINAL, WHEN HE IS INCARCERATED, SERVES TIME IN A COUNTRY CLUB ENVIRONMENT WHEN THOSE WHO ARE POOR AND DISADVANTAGED ARE CRAMMED INTO OVERCROWDED PRISONS AND FACE THREATS OF VIOLENCE?

ANSWER:

Wealth is a wholly inappropriate basis on which to draw distinctions for purposes of incarceration.

5. I AM CONCERNED THAT WHITE COLLAR CRIMINALS HAVE FAR MORE OPPORTUNITY TO SERVE THEIR SENTENCES BY DOING COMMUNITY SERVICE THAN DO THE POOR AND DISADVANTAGED WHO SERVE JAIL TIME. WHAT DISCRETION DO THE SENTENCING GUIDELINES GIVE A JUDGE TO PERMIT THE WHITE COLLAR CRIMINAL TO SERVE HIS SENTENCE THROUGH COMMUNITY SERVICE? DO YOU THINK THIS IS FAIR AND/OR APPROPRIATE?

ANSWER:

The Sentencing Guidelines significantly limit the judge's discretion to order a sentence limited to probation with a condition of community service, in that they require minimum terms of restricted liberty for offenses more serious than level six. That level will be met or exceeded by virtually all serious fraud offenses, and thus those committing significant white collar crimes will face some term of restricted liberty. In those cases where the court still has the option of imposing a probationary sentence, community service remains a possible condition of probation. I believe that there are times when imposition of community service is useful, both for its punitive and for its rehabilitative effects.

Senator SIMON. Kevin Moore, will stand and raise your right hand? Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MOORE. I do.

Senator SIMON. Mr. Moore, let me just mention that both Senator Graham and Senator Mack intended to be here, and had we had our 10 o'clock meeting this morning, they would have been here to introduce you. I figured you and the others would prefer going ahead rather than waiting for another week.

TESTIMONY OF KEVIN MICHAEL MOORE, TALLAHASSEE, FL, TO BE DIRECTOR OF THE U.S. MARSHALS SERVICE

Mr. MOORE. Absolutely, Mr. Chairman. I understand they had more important duties, a football game in Gainesville. [Laughter.]

Senator SIMON. Do you have any friends or family you wish to introduce at this point?

Mr. MOORE. I opted to keep my children in school instead of bringing them.

Senator SIMON. All right. On December 30, Attorney General Richard Thornburgh requested that the Justice Management Division of the Justice Department conduct a special audit of the financial and programmatic management of the U.S. Marshals Service.

The audit report states, and I am quoting, "The Service's financial management system is marginally adequate." The report concludes, "Increasing resources alone will not solve these problems. Top management must recognize the need for financial accountability and must be willing to devote full support to achieving it."

Are you aware of that report, and if so. what assurances do we have from you that you are going to be moving and trying to solve the problems?

Mr. MOORE. Mr. Chairman, I am aware of the report. I have it in front of me. I have read it on more than one occasion. I am sensitive to the issues of concern that the audit raised. I have also had the opportunity of reading if I am confirmed, my predecessor's response to that report as well.

I can only tell you and assure you that where they have identified weaknesses that are of a systemic nature, I intend on focusing my own attention on it and the attention of the other managers at the Marshals Service. Where there have been isolated problems, I hope that some of them have already been addressed.

I know that the audit itself dealt with the period of fiscal 1988, and in Director Morris' response he did indicate that he felt some of those issues had already been addressed since the time of the audit; that steps were being taken to address some of the other problems.

And, quite frankly, without judging the merits of the report or Mr. Morris' response, I think he felt that there might have been some areas where he disagreed with the auditors in terms of the information they had.

So my answer really is that I am aware of it and, if confirmed, I will devote myself to those issues raised in the financial area as well as the other areas of the audit.

Senator SIMON. And you intend to move vigorously on those?

Mr. **MOORE**. Yes, sir.

Senator **SIMON**. One other question. The report also indicates—and part of your responsibility is protecting Federal witnesses and protecting Federal judges. There are as many as 125 names that have not been submitted for security clearance, and the audit report indicates you could have people who have been working for your Service as long as 3 years who have not had that kind of basic security clearance.

Any comments on your part on that?

Mr. **MOORE**. Well, obviously, it is a serious problem. I think what Director Morris pointed out was that he recognized he was a problem. At one time, it was as high as 1,000 and they were able to move to reduce that outstanding number of uncleared employees down to 125. That was at the time of the report.

I don't know exactly what the precise number is today. But, certainly, my own feeling is that you don't bring on anyone unless they have had at least one of the standard criteria for clearance, either a fingerprint check or a name check.

Senator **SIMON**. Senator Thurmond.

Senator **THURMOND**. Thank you, Mr. Chairman. Mr. Chairman, I have prepared a statement here endorsing Mr. Michael Moore. To save time, I will just ask unanimous consent that it be placed in the record.

Senator **SIMON**. It will be entered in the record.

[The statement of Senator Thurmond follows:]

STATEMENT FOR SENATOR STROM THURMOND (R-SC) REGARDING THE NOMINATION OF MICHAEL MOORE, OF FLORIDA, TO BE THE DIRECTOR OF THE UNITED STATES MARSHAL SERVICE, BEFORE THE SENATE JUDICIARY COMMITTEE, OCTOBER 20, 1989, 10:00 AM, SD-226.

MR. CHAIRMAN:

THIS MORNING, WE BEGIN THE CONFIRMATION HEARING ON PRESIDENT BUSH'S NOMINATION OF MICHAEL MOORE, OF FLORIDA, TO BE THE DIRECTOR OF THE UNITED STATES MARSHALS SERVICE.

MR. MOORE, I WOULD LIKE TO WELCOME YOU AND YOUR FAMILY HERE TODAY, AND EXTEND MY CONGRATULATIONS ON YOUR NOMINATION. THIS IS THE FIRST TIME IN THE HISTORY OF THE U.S. MARSHALS SERVICE THAT THE POSITION OF DIRECTOR HAS BEEN APPOINTED BY THE PRESIDENT. IN THE PAST, THE DIRECTOR WAS APPOINTED BY THE ATTORNEY GENERAL. THEREFORE, MR. MOORE YOUR NOMINATION MARKS AN HISTORIC OCCASION FOR THE MARSHALS SERVICE. YOU CAN BE PROUD OF THE TRUST AND CONFIDENCE PLACED IN YOU BY THE PRESIDENT.

MR. CHAIRMAN, MR. MOORE'S BACKGROUND HAS PREPARED HIM WELL FOR THIS POSITION. HE IS A 1972 GRADUATE OF FLORIDA STATE UNIVERSITY, AND A 1976 GRADUATE OF FORDHAM LAW SCHOOL. THROUGHOUT HIS PROFESSIONAL CAREER MR. MOORE HAS BEEN WITH THE DEPARTMENT OF JUSTICE. FOLLOWING GRADUATION FROM LAW SCHOOL, HE SERVED FIVE YEARS AS AN ASSISTANT U.S. ATTORNEY FOR THE SOUTHERN DISTRICT OF FLORIDA. SINCE 1981, HE HAS SERVED IN THE U.S. ATTORNEY'S OFFICE IN THE NORTHERN DISTRICT OF FLORIDA IN SEVERAL CAPACITIES. PRESENTLY, HE IS THE U.S ATTORNEY FOR THAT DISTRICT. MR. MOORE HAS THE EXPERIENCE AND ABILITY TO BE AN EFFECTIVE ADMINISTRATOR FOR THE U.S. MARSHALS SERVICE.

THE POSITION OF DIRECTOR OF THE MARSHALS SERVICE IS AN IMPORTANT ONE NOW HONORED WITH THE DISTINCTION OF BEING A PRESIDENTIAL APPOINTMENT. I BELIEVE MR. MOORE POSSESSES THE KNOWLEDGE, JUDGMENT, INTEGRITY AND EXPERIENCE TO SERVE IN AN EXEMPLARY MANNER AS DIRECTOR, AND I AM CONFIDENT THAT HE WILL DO AN OUTSTANDING JOB. AGAIN, MR. MOORE I LOOK FORWARD TO HEARING YOUR TESTIMONY.

Senator THURMOND Senator Mack planned to be here, but he was unable to do so. But he would like the committee to know that he is very supportive of Mr. Moore and he will provide a statement for the record in his behalf. I ask unanimous consent that that go in the record.

Senator SIMON. It will be entered in the record. Also, I have a statement of Senator Graham for the record.

[The prepared statements follows:]

DIRECTOR OF THE MARSHALS SERVICE
DEPARTMENT OF JUSTICE
KEVIN MICHAEL MOORE
RECORD INSERT, JUDICIARY COMMITTEE, FRIDAY, OCTOBER 20, 1989

Mr. Chairman, Members of the Committee, I strongly support Mr. Kevin Michael Moore, the Director designate for the United States Marshals Service at the Justice Department.

I believe that President Bush and Attorney General Thornburgh have made a fine choice. I say this not only because Mike is from Florida, but also because he is extremely capable and will honorably serve the U.S. Marshals Service.

Mike is no stranger to the Department of Justice having served in its ranks in Florida since 1976. Prior to his appointment as United States Attorney, Mike served in the Northern District of Florida as Chief Assistant United States Attorney; Court Appointed United States Attorney and Supervisory Assistant United States Attorney. In these capacities, Mike has not only acquired significant litigation experience, but has directed and supervised a variety of legal management functions in the areas of administration, personnel, budget, finance, procurement, space and security. His legal activities have also involved significant representational and liaison work with local, state and federal law enforcement officials and state and federal judicial officers.

Mike is currently a member of the Attorney General's Advisory Committee (AGAC) of the United States Attorneys. The AGAC serves as an advisory body to the Attorney General on a wide variety of legal issues confronting the Department of Justice and the United States Attorneys offices. He is Chairman of the Office Management Subcommittee of the AGAC and recently received a Special Commendation from Attorney General Thornburgh for his work in this capacity.

I know Mike and consider him to be a very competent and dedicated individual. Mike's fine reputation coupled with his law enforcement and legal experience make him an obvious choice to serve as Director of the Marshals Service.

I appreciate your consideration and I urge your unanimous support of Mr. Mike Moore for Director of the U.S. Marshals Service.

Senator Connie Mack
517 Hart Senate Office Building
Washington, D.C.

United States Senate
WASHINGTON, DC 20510

Statement of Senator Bob Graham Introducing Michael Moore

Thank-you, Mr. Chairman.

I'm honored to introduce an outstanding Floridian and an outstanding American to this committee: Mr. Mike Moore.

Mike Moore is a veteran lawyer, skilled prosecutor and proven manager.

And, he's willing to move from beautiful Tallahassee, Florida, to Washington.

But don't hold that against him!

The President has made a solid choice for our next director of the U.S. Marshals Service, because Mike Moore understands the vital role of the Marshals Service in our federal law enforcement system.

Mike Moore has worked in the U.S. Attorney's office in the southern district of Florida -- one of the most active in the nation -- and the northern district of Florida.

Since 1987, Mike Moore has served as U.S. Attorney for the northern district of Florida.

The U.S. Marshals Service -- celebrating its 200th anniversary this year -- will be well-served by this nominee, who brings such an outstanding legal and law-enforcement background to his new assignment.

Mr. Chairman, I commend to you Florida's latest contribution to Washington, Mike Moore.

Senator **Thurmond**. Mr. Herbert Bryant, Jr., commissioner of the State Drug Task Force of Virginia, is present, but to save time, he would like for his statement to be entered in the record, and I ask unanimous consent for that.

Senator **Simon**. It will be entered in the record.

[The statement of Mr. Bryant follows:]

STATEMENT

Mr. Chairman, I am honored today to have the opportunity to speak on behalf of Kevin Michael Moore, the Presidential nominee for the position of the Director of the United States Marshals Service. Mike Moore, currently the United States Attorney for the Northern District of Florida, has been a most effective prosecutor in this country's war on crime and drugs. He brings with him not only twelve years of this experience but also the experience of an adept manager. The broad spectrum of duties of the Marshals Service should be well suited to Mike Moore's analytical direction. He understands resources and the priorities of their allocation in a timely fashion. This is extremely critical in today's fight against crime. The prevention of crime and the management of the problems it causes is big business today and now more than ever requires new and innovative skills. Mike Moore possesses these skills but more importantly he has the unique and proven ability to use them in harmony with others, at a personal and agency level. This will be a tremendous asset to his success in running the United States Marshals Service, our nations oldest federal law enforcement agency. Mike Moore's continued commitment to the enforcement community and the successes he has gained is proof of his desire to serve in this very demanding field. A desire we all share. He is well known and respected by his peers and we are proud to be here today to express our support of your consideration in confirming our beliefs. I thank this esteemed committee for the chance to speak before you today on behalf of Kevin Michael Moore.

J.C. Herbert Bryant, Jr., Commissioner
State Drug Task Force
Commonwealth of Virginia

Senator **Thurmond**. We thank you very much for being here, too, Mr. Bryant.

Mr. **Bryant**. Thank you, Senator.

Senator **Thurmond**. Now, Mr. Moore, I want to congratulate you on your selection by the President. This is the first time I believe the President has made such a nomination——

Mr. **Moore**. That is correct, Senator.

Senator **Thurmond** [continuing]. The first Presidentially appointed position of Director of the U.S. Marshals Service.

I believe you have already given your experience; you have shown it here. You have a B.A. degree from Florida State University and a J.D. degree from Fordham Law School. You have been assistant U.S. attorney and U.S. attorney for a period of about 11 years in all, I believe.

Mr. **Moore**. Yes, Senator.

Senator **Thurmond**. Some of the marshals in the past have not been lawyers, and I think it is a great advantage to them if they are lawyers and I am very pleased that you have had that training.

I believe you presently serve as U.S. attorney for the northern district of Florida. Do you foresee any difficulty in the transition from the more narrowly defined area of responsibility you have now in your present position to the broader day-to-day activities you will undertake if confirmed as Director of the Marshals Service?

Mr. **Moore**. Senator, I think to the extent that there may be disadvantages, I can turn them into strengths. I am at a field level, so to speak, operation, but I think I also work very closely, as U.S. attorneys do throughout the country, to work with U.S. Marshals throughout the country. They are parallel in their geographical orientation as far as there are 94 Federal district courts, 94 U.S. attorney districts, 94 U.S. Marshal districts.

I think I can take that field experience and bring it to the headquarters level. I think other than being U.S. attorney, I have also had an opportunity to serve as a member of the Attorney General's Advisory Committee, where we have worked with the U.S. Marshals Service in the past on a wide variety of issues that have significance and impact not just on any particular district, but nationwide. And I think I have done that both as a member of that committee and as the chairman of the Office Management Subcommittee of that committee.

Senator **Thurmond**. Do you have any particular priorities in mind in your new position?

Mr. **Moore**. Well, I think the first priority for the Marshals Service has, and should continue to be, the statutory responsibility for the protection of the Federal judiciary and witnesses. They have a variety of duties, but I think first and foremost that is their mission.

There are a number of other areas that I think present a challenge both in terms of the apprehension of fugitives both domestically and internationally. I think the asset forfeiture program that was alluded to earlier by the nominee for Deputy Attorney General is an expanding area that the Marshals Service will be deeply involved in. So those are three areas to start with.

Senator THURMOND. I think you will do a good job and I wish you well.

Mr. MOORE. Thank you, Senator.

Senator SIMON. Thank you very much, Mr. Moore.

Mr. MOORE. Thank you, Mr. Chairman.

[Response to questions follow:]

U.S. Department of Justice

Office of the Assistant Attorney General

Washington, D.C. 20530

October 24, 1989

Honorable Joseph R. Biden
Chairman
Senate Judiciary Committee
United States Senate
Washington, D. C. 20510

Dear Chairman:

Enclosed are the responses of K. Michael Moore to the written questions of Senator Kennedy in connection with his nomination as Director of the United States Marshal Service.

If we can be of any further assistance please let us know.

Sincerely,

Carol T. Crawford

Carol T. Crawford
Assistant Attorney General

Enclosure

cc: Honorable Strom Thurmond

WRITTEN RESPONSES SUBMITTED
BY KEVIN MICHAEL MOORE
TO QUESTIONS SUBMITTED
BY SENATOR EDWARD M. KENNEDY

UNITED STATES SENATE JUDICIARY COMMITTEE
OCTOBER 20, 1989

1. What priority does the Marshals Service assign to fugitive and warrant cases relative to the Marshals Service's responsibilities for court and prisoner security, and how does that compare with your understanding of the priority the Federal Bureau of Investigation assigns to fugitive cases?

> The primary statutory role and mission of the U.S. Marshals Service contained at 28 U.S.C. § 566(a) is to provide for the security and to obey, execute, and enforce all orders of the U.S. District Court. Fugitive and warrant cases are developed as a direct result of the Marshals Service obligation to execute and enforce warrants for arrests. The February 1989 audit of the Marshals Service identified the level of activity for fiscal year 1987 as being 23 per cent for fugitive investigations and 28 per cent for protection of the judiciary. For fiscal year 1988, the level of activity was 18 per cent for fugitive investigations and 12 per cent for protection of the judiciary. I do not have sufficient information to compare the Marshals Service with the Federal Bureau of Investigation in terms of the priority which each agency attaches to fugitive cases.

2. How will you balance the competing interests that come into play between the Marshals Service and the Federal Bureau of Investigation in the handling of fugitive cases?

> Specific policy guidance has been provided by the Attorney General's office which addresses the handling of fugitive cases by the Marshals Service and the Federal Bureau of Investigation. It is my obligation to see that the Departmentwide policy on this issue is observed. I believe this policy balances any competing interests that come into play between the Marshals Service and the Federal Bureau of Investigation in the handling of fugitive cases. If confirmed, I will strive to work cooperatively with the F.B.I. to apprehend fugitive felons.

3. In 1979, the Fugitives Investigation Strike Team, known as "Operation FIST," was originated. This successful program was designed to coordinate Marshals Service activities with state and local authorities. Although the program reportedly fostered important liaisons, reduced the number of outstanding warrants and apprehended a number of Federal fugitives, it was discontinued several years ago. What is your understanding of the reasons behind the decision to discontinue Operation Fist, and under what circumstances would you consider reinstating the program?

> It is not my understanding that the FIST program has been discontinued. The program has continued with different names in order to target specific classes of violators. If confirmed by the Senate, I have every intention of continuing this program.

4. A significant portion of Marshals Service resources is devoted to transporting prisoners to and from court. How has the current shortage in jail space affected the Marshals Service and what alternatives will you study to deal with the problem?

> As a nominee, I am not in a position to assess the full impact of the current shortage in jail space on the Marshals Service. However, as United States Attorney, I believe I have experienced firsthand the problems being created by the lack of jail space not only on the Marshals Service but on the entire Federal criminal justice system. I will study the existing Cooperative Agreement Program (CAP) as well as alternative proposals to expand the existing jail space either through publicly or privately financed facilities, and will make this a priority, if confirmed.

5. What is your understanding of the extent to which district offices are staffed by political appointments with limited law enforcement experience prior to joining the Service?

> It is my understanding that district offices are not staffed by political appointments with limited law enforcement experience prior to joining the Service. The general procedures for selection of United States Marshals were previously set forth on March 18, 1981 by then Attorney General William French Smith. These procedures identify the necessary skills and backgrounds which must be reflected for appointment as United States Marshal. Deputy U.S. Marshals are career civil servants and are hired through the merit selection process.

6. The February 1989 Department of Justice Audit of the Marshals Service revealed extensive shortcomings in the hiring methods and background screenings employed by the Service. What is your understanding of the reasons for these shortcomings and what will you do to improve the Marshals Service's security personnel screening practices?

The former Director of the United States Marshals Service acknowledged shortcomings in the hiring methods and background screenings in his March 8, 1989 response to the Department of Justice audit. He further pointed out that in 1986 the Service had over 1,000 employees who did not have the required background investigation and that this number was reduced to 125 in three years with further progress hoped for. I am sensitive to this issue and, if confirmed, will ensure that any remaining backlog is eliminated.

7. What steps will you take to improve recruitment and retention at the U.S. Marshals Service?

If confirmed, I will work with the Department of Justice and other members of the Executive Branch to evaluate the impact pay has on recruitment and retention. I will also work to upgrade training and professionalism in the Marshals Service which I believe will assist in recruitment and retention.

8. What goals do you intend to establish for the U.S. Marshals Service, which goal do you consider the most important and how will you measure the Service's ability to meet those goals?

My goals are, first and foremost, seeing that the statutory duties of the Marshals Service are faithfully discharged. The most important of these is providing for the security and protection of the Federal judiciary. Other goals are in the areas of jail overcrowding, asset forfeiture and apprehension of narcotics fugitives. The measure of success in each of these areas respectively will be in seeing no harm done to any judicial officer, expanded jail facilities, improved management of seized assets, and apprehension of major national and international narcotics fugitives.

9. The February 1989 Department of Justice Audit of the Marshals Service pointed to a need for more coordination of effort and managerial controls within the Service and criticized accounting systems within the Service. What steps will you take to address this criticism?

> It is my understanding that steps are underway to address the areas of concern which were noted in the February 1989 audit. At my confirmation hearing, I assured Senator Simon that I would give this area my personal attention. If confirmed, I intend on immediately raising these issues with senior Marshals Service management and will stay on top of this issue until it is satisfactorily resolved. If necessary, I will request a follow-up audit to insure accountability and compliance with applicable regulations.

10. What steps, if any, would you take to improve the effectiveness of the Marshals Service's automated information services?

> It is my understanding that in this area, as well, steps are underway to improve the Service's automated information services. As United States Attorney, I served on a Department of Justice procurement committee to acquire state-of-the-art automated information services. Representatives of the Marshals Service have recently been in contact with Justice Management Division regarding this procurement and I intend to follow-up on this matter to explore whether this acquisition would be of benefit to the Service.

11. The Marshals Service Forfeiture Unit located in Washington, D.C., has been a successful operation. How would you propose to enhance the Marshals Service's forfeiture capability?

> The Marshals Service's responsibility in the forfeiture area is primarily in property and cash management and disposition of property. I believe our forfeiture capability can be enhanced through closer inter-agency coordination, better assessment of the existing equity in property subject to seizure, quicker disposition, where possible, and emphasis on administrative rather than judicial resolution of forfeiture disputes, where appropriate.

12. The U.S. Marshals Foundation has included as members of its Board of Directors and its Advisory Board and solicits contributions and memberships from individuals who reportedly have financial dealings with the Department of Justice and the Marshals Service. What is your understanding of the role of the U.S. Marshals Foundation, and the ethical constraints that may apply to such fundraising activity?

> I understand the U.S. Marshals Foundation to be a private, nonprofit organization of individuals interested in promoting public awareness of the role which U.S. Marshals have played and continue to play in this country's history. If confirmed, I will promptly request appropriate guidance from Department of Justice ethics officials with regard to any ethical constraints imposed on the Service in dealing with the Foundation and follow such guidance.

Senator SIMON. The final witness today is Mr. Fred Ikenson of the Customs and International Trade Bar Association. Mr. Ikenson, we are happy to have you with us. We will be happy to enter any formal statement you have in the record and you can speak briefly.

STATEMENT OF FREDERICK L. IKENSON, CHAIRMAN, JUDICIAL SELECTION COMMITTEE, CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION

Mr. IKENSON. Thank you, Mr. Chairman. We have submitted testimony, prepared testimony. I would ask that that be made part of the record.

Senator SIMON. All right, and, in the interest of time, if you can confine your remarks to 5 minutes here, it would be appreciated.

Mr. IKENSON. Yes, Senator. Thank you for the opportunity to testify today. I am the Chairman of the Judicial Selection Committee of the Customs and International Trade Bar Association.

Our association is a national bar association over 60 years old whose members regularly practice before the Court of International Trade and the court of appeals for the Federal circuit. Our members are vitally concerned with nominations to these courts and, in fact, for many years we have endeavored to assist this committee in the evaluation of every nominee.

It is with great regret, therefore, that I must report to you that because of obstacles interposed by the Justice Department, we have been unable to evaluate Mr. Plager's qualifications at this time. In fact, the Federal Circuit Bar Association and the ITC Trial Lawyers Association have had the same experience and have each written to this committee to advise of their inability to evaluate the nominee, also.

Mr. Andrew Vance, the president of the Federal Circuit Bar Association, and Mr. Stephen Lipman, president-elect of the ITC Trial Lawyers Association and the current Chairman of their Judicial Selection Committee, are present in this hearing room today.

We had really thought that the days of noncooperation from the Justice Department were behind us. You may remember, Mr. Chairman, that in 1985 you and Senator Mathias wrote to the Justice Department expressing concern that our bar association had not been brought into the nomination process for nominees to the Court of International Trade.

A year-and-a-half later, I testified here on the nomination of a candidate to the court of appeals for the Federal circuit and I advised the committee of the Justice Department's continuing practice of discouraging its judicial nominees from cooperating with us in our evaluative efforts.

In connection with that proceeding, we presented the committee with quite a bit of information regarding our association, the way in which we carried out our evaluation or screening process, and similar matters. We demonstrated, we think, quite clearly that the process we used was eminently reasonable and not at all burdensome on the nominees.

Subsequent to that hearing, a most welcome change in position occurred at the Department of Justice. Nominees to the two courts we are interested in were no longer discouraged from cooperating with us or from answering our questionnaires.

As a consequence, we were able to perform thorough evaluations of the three succeeding candidates to these courts, R. Kenton Musgrave, Susan Liebeler, and Paul Michel, and we were able to report our findings to the committee in a timely manner.

In its report on Ms. Liebeler, this committee made several points with respect to our association. For one thing, the committee stated that our association is a well-respected organization which, because of the expertise of its members in trade law and the range of interests they represent, certainly has the potential to make a valuable contribution to the committee's consideration of nominations to courts, such as the court of appeals for the Federal circuit.

Also, this committee opined that that potential to make a valuable contribution had been realized, and the committee took note of our association's practice of consistently commenting, usually favorably, upon the qualifications of nominees to the Court of International Trade and to the Federal circuit, and of frequently raising important issues for the committee's consideration.

Further, in additon to commending our association's investigation of and report on Ms. Liebeler, the committee viewed the format of our report as preferable to that of the American Bar Association. In fact, the committee commended the format of our report, and I quote, "as a model that other bar associations may wish to emulate if they desire to make a more meaningful contribution to the advice and consent process for nominees to the lower Federal courts," end quote.

Finally, with respect to the Justice Department's past practice of noncooperation, this committee said, and if I may, I would quote again, "If indeed the Justice Department has followed a practice of discouraging input from expert voluntary bar associations such as CITBA into the judicial selection process for these courts, the committee urges the Department to reconsider its position," end of quote.

As we have indicated, by the time this report was published in July 1988, the Justice Department had reconsidered and corrected its previous position of counseling noncooperation.

In fact, in January 1988, the assistant attorney general in charge of the Office of Legal Policy assured that in the future the Justice Department would inform our bar association of prospective nominees at the same time that it informed the American Bar Association. So far, so good.

However, something happened recently which has——

Senator SIMON. If you could conclude.

Mr. IKENSON. Very well. We have been recently placed back at square one. When we attempted to interview Mr. Plager, we were told by the Justice Department that Mr. Plager was instructed not to cooperate with us and not to respond to our questionnaires.

Senator SIMON. Do you have any idea who made that decision?

Mr. IKENSON. The person at the Justice Department with whom I spoke is an assistant to the Attorney General named Murray Dickman.

Senator SIMON. At least one member of this committee, and I think I will be joined, will write a letter to the Attorney General and see if we can get this straightened out.

Let me just enter into the record the letter that Senator Mathias and I wrote on November 14, 1985, in behalf of your association.

[The letter referred to follows:]

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510

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DENNIS DECONCINI, ARIZONA

RALPH OMAN, CHIEF COUNSEL
STEVEN J. METALITZ, STAFF DIRECTOR

November 14, 1985

The Honorable Stephen J. Markman
Assistant Attorney General
Office of Legal Policy
Department of Justice
Washington, D.C. 20530

Dear Mr. Markman:

In the Senate Judiciary Committee hearing on the nomination of Nicholas Tsoucalas to be a member of the Court of International Trade, the Customs and International Trade Bar Association testified. The testimony was informative but disquieting. The Bar Association made four points. We think all of them merit your attention.

First, the association pointed out that if Mr. Tsoucalas' nomination is confirmed, he will be the seventh of nine judges on this court from New York state. This lack of geographical diversity concerns the association.

Second, the caliber of the Court of International Trade judges needs to be as high as that of U.S. District Judges.

Third, experience in the practice of customs and international trade law should be considered a necessary qualification for candidates for nomination to that court.

Finally, the Customs and International Trade Bar Association, as the only national bar association with a specialty in this area, has not been brought into the nomination process for the Court of International Trade nominees.

We will be interested in your reaction to these points, and in your comments as to how the Justice Department plans to address them.

Sincerely,

Paul Simon
United States Senator

Charles McC. Mathias, Jr.
United States Senator

CM:smd

Senator SIMON. Let me ask two questions that Senator Thurmond asked me to direct to you. Mr. Ikenson, I would just like to ask for the record if the disagreement you have with the Justice Department over your bar association's role in the judicial selection process occurred as a result of Mr. Plager's nomination or has this been ongoing for some time.

Mr. IKENSON. It is really neither. It is not as a result of Mr. Plager's nomination and it has not been ongoing for some time. It had been corrected. So we have returned to the practice of several years ago.

Senator SIMON. And the second question: Mr. Ikenson, has the Department of Justice recently asked you or your organization to recommend individuals you would like to see be considered for the Federal circuit? If so, have you submitted your list of potential nominees to the Department?

Mr. IKENSON. The answer is yes, we have been requested to prepare such a list, and we are in the process of preparing it and sending it to the President.

Senator SIMON. OK. If I may just suggest that you work with my staff and with the Judiciary Committee staff, we will see that another letter goes to the Attorney General.

Mr. IKENSON. Thank you, Mr. Chairman.

Senator SIMON. We thank you.

[A letter of support and the statement of Mr. Ikenson follow:]

U.S. Department of Justice

United States Attorney
Northern District of Illinois

United States Courthouse
Chicago, Illinois 60604

October 18, 1989

Hon. Paul Simon
United States Senate
Washington, D.C. 20510

Dear Senator Simon:

Kevin Michael Moore is to appear before the Senate Judiciary Committee in connection with his confirmation hearing for the position of United States Marshal.

I want to tell you of the high regard with which Mr. Moore is held by the United States Attorneys across the nation. Since his appointment as United States Attorney Mr. Moore has worked with various United States Attorneys across the country on projects particularly related to our efforts to stem the tide of drugs flowing into this country. To a person the United States Attorneys with whom I have spoken have voiced their high regard not only for Mr. Moore's enthusiasm, but for his professionalism and good judgment in addressing this issue.

He is known as a tireless worker and his efforts have produced a quality result. His district is viewed as being extremely well administered and enjoys an excellent reputation for professionalism in law enforcement.

The job of United States Marshal is a complex one. It requires not only a person with professional law enforcement experience, but someone who is sensitive to the intertwining relationships between the prosecutor, the Marshal's Office and the Court. Mr. Moore would fulfill that position in an exemplary fashion. I strongly urge your positive consideration of Mr. Moore as United States Marshal.

Sincerely yours,

ANTON R. VALUKAS
United States Attorney
Northern District of Illinois

ARV/ej

BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

STATEMENT OF FREDERICK L. IKENSON, CHAIRMAN, JUDICIAL SELECTION COMMITTEE, CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION, ON THE NOMINATION OF S. JAY PLAGER TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

FREDERICK L. IKENSON
CHAIRMAN, JUDICIAL SELECTION
COMMITTEE, CUSTOMS AND
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ASSOCIATION
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OCTOBER 20, 1989

BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

STATEMENT OF FREDERICK L. IKENSON, CHAIRMAN, JUDICIAL SELECTION COMMITTEE, CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION, ON THE NOMINATION OF S. JAY PLAGER TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

I am Frederick L. Ikenson, Chairman of the Judicial Selection Committee of the Customs and International Trade Bar Association. Our association is a national bar association, over sixty years old, whose members regularly practice before the Court of International Trade and its appellate court, the Court of Appeals for the Federal Circuit. Our members are vitally concerned with nominations to these courts and, in fact, for many years, we have endeavored to assist this Committee in the evaluation of every nominee. It is with great regret, therefore, that I must report to you that, because of obstacles interposed by the Justice Department, we have been unable to evaluate Mr. Plager's qualifications at this time.

Several years ago, in November 1985, in connection with the confirmation hearing on the nomination of Judge Tsoucalis-- then, a nominee to the Court of International Trade -- Senators Simon and Mathias of this Committee wrote to the Justice Department, expressing concern that our bar association had not been brought into the nomination process for nominees to that Court. (A copy of the letter is annexed as Attachment 1.)

Subsequently, during the next hearing -- held in May 1987 on the nomination of Judge Mayer to the Court of Appeals for the Federal Circuit -- I testified that our evaluation process continued to be encumbered by the Executive Branch's failure to cooperate with us. (A copy of the hearing testimony is annexed as Attachment 2.) I stated that "the Justice Department has consistently declined to provide us with the names of its judicial nominees at the time that it provides them to the American Bar Association, and, moreover, it has consistently discouraged its nominees from providing us with a response to our questionnaire." Thereafter, we received several written questions from the Committee, which we answered. (Copies of questions and answers are annexed as Attachment 3.) The questions and answers addressed, among other things, our bar association's judicial evaluation process and our relationship with the Justice Department. We clearly demonstrated that the process was eminently reasonable and not at all burdensome on the nominee.

Subsequent to the Mayer confirmation (which we were able to support, because of an abundance of information which was available to us from sources other than the Justice Department or the nominee), we experienced a very positive change in position at the Justice Department. Nominees to the two courts were no longer discouraged from cooperating with us or from answering our questionnaires. As a consequence, we were able to perform thorough evaluations of the three succeeding nominees, R. Kenton Musgrave, Susan W. Liebeler, and Paul R. Michel, and to report our findings in a timely manner to this Committee. Judges

Musgrave and Michel, both of whom we found qualified, were confirmed by the Senate and now sit on the Court of International Trade and the Court of Appeals for the Federal Circuit, respectively. We submitted a lengthy report on Ms. Liebeler, in which we presented our conclusion that she was not qualified to serve on the Federal Circuit. This Committee voted against her confirmation and she was not confirmed.

In fact, this Committee's Report on Ms. Liebeler took pains (1) to acknowledge the assistance we were able to provide the Committee and (2) to urge the Justice Department not to discourage judicial nominees from cooperating with us. Exec. Rept. 16, 100th Cong., 2d Sess. (July 14, 1988). For example, the Committee Report states (id. at 8-9):

> The Customs and International Trade Bar Association is a well-respected organization, more than half a century old, whose members engage in the practice of international trade and customs law, and appear frequently before the ITC. With respect to ITC practice in particular, CITBA's president testified that most of CITBA's members represent import interests, though a substantial minority represent domestic industries. (11/3 Tr., at 65). The expertise of CITBA's members in trade litigation, and the range of interests they represent, certainly suggest that this organization has the potential to make a valuable contribution to the commmittee's consideration of nominations to courts, such as the Court of Appeals for the Federal Circuit, whose jurisdiction includes trade law matters.
>
> In the committee's view, that potential has been realized. Over the past several years, CITBA has consistently commented-- usually favorably -- upon the qualifications of nominees to the Court of International Trade and the Court of Appeals for the

Federal Circuit, and has frequently raised important issues for the committee's consideration.

The committee has welcomed CITBA's contributions to the process of selecting federal judges. But, according to CITBA, that contribution has not always been welcomed by the other principal participant in the judicial selection process, the Department of Justice. At a hearing on another Federal Circuit nomination held on May 13, 1987, CITBA representatives testified that the Justice Department has discouraged at lease some nominees from cooperating with the evaluative efforts of voluntary bar associations, including CITBA.

If indeed the Justice Department has followed a practice of discouraging input from expert voluntary bar associations such as CITBA into the judicial selection process for these courts, the committee urges the Department to reconsider its position. In any event, the existence of such a short-sighted practice underscores the importance of careful consideration by the committee of the views of voluntary bar associations, such as CITBA, as well as the Federal Circuit Bar Association and the ITC Trial Lawyers Association, which also offered testimony on this nomination.

At the hearing on November 3, 1987, all three of these bar associations offered testimony, and their representatives were questioned by the committee concerning the bases for their conclusions. That record clearly reflects that the investigation leading up to CITBA's report was extensive and conscientious. CITBA's judicial screening commmittee conducted 30 to 40 interviews, including trade practitioners, all the nominee's fellow Commissioners, "numerous" ITC staff members, and other individuals with knowledge of the nominee's qualifications. It also reviewed her decisions as an ITC Commissioner. A draft report was circulated and debated within CITBA, and the organization's board of directors voted almost unanimously to adopt the report later submitted to the committee.

(Tr. 11/3, at 65-66, 70-71, 85-89.) The Federal Circuit Bar Association, by contrast, conducted an unascertained number of interviews, which did not include any other ITC Commissioners or staff; one of the members of its judicial evaluation committee reviewed the nominee's ITC decisions; and an oral report was made to the board of directors. (Id. at 66-68, 70.) The ITC Trial Lawyers Association conducted no interviews, and polled its board of directors, which endorsed the nomination with some dissent. (Id. at 68-70.) Finally, the testimony and submitted report of the CITBA was quite extensive, including a summary of its interviews, a review of the nominee's opinions in three major areas of law, and other material.

The only bar association which submits to the committee an evaluation of every judicial nominee is the American Bar Association. The ABA's investigative and evaluative process, which has been described to this committee on several occasions, is quite extensive and thorough. However, several members of the committee have, at various times, criticized the fact that for lower court nominations, the ABA provides no explanation whatever of the reasons for its evaluation, except in the unusual case in which a majority of the ABA Standing Committee on the Federal Judiciary concludes that a nominee is unqualified.

The committee commends the format of the report prepared by the Customs and International Trade Bar Association as a model that other bar associations may wish to emulate if they desire to make a more meaningful contribution to the advice and consent process for nominees to the lower federal courts. The CITBA report on this nomination clearly states the reasons for its conclusions, and identifies particularly matters which the organization believes the committee should take into account in its action on the nomination. Members of the committee may disagree with some or all of its conclusions, but it nevertheless represents a sincere effort by knowledgeable lawyers to make the committee's consideration of this nomination better informed and more focused on the relevant issues.

As we have indicated, by the time this Report was published -- July 1988 -- the Justice Department had reconsidered and corrected its previous position of counseling noncooperation. In fact, in January 1988, the Assistant Attorney General in charge of the Office of Legal Policy assured us that, in the future, the Justice Department would inform our bar association of prospective nominees to the Court of International Trade and the Court of Appeals for the Federal Circuit at the same time that it informs the American Bar Association of such prospective nominees. (A copy of our letter confirming such agreement is annexed as Attachment 4.)

Subsequent to that agreement, we were informed of two prospective nominees to the Federal Circuit, neither of whom was nominated. However, they had either cooperated with our evaluation efforts or pledged to cooperate.

This past summer, we learned that Mr. Plager was being considered for the Federal Circuit. After writing to Mr. Plager in August, we were informed by a Justice Department official that Justice had advised Mr. Plager not to meet with us and not to answer our questionnaire.

Given the Justice Department's counsel, we do not fault Mr. Plager for being reluctant to cooperate with us. However, absent such cooperation, we are prevented from evaluating his qualifications and from providing this Committee with the assistance which we have provided in the past. We would hope that the Committee would, once again, suggest to the Justice Department that the judicial nomination process -- both in general and with respect to the present nominee -- stands to be aided by cooperation between the Department and our association.

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510

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RALPH OMAN, CHIEF COUNSEL
STEVEN J. METALITZ, STAFF DIRECTOR

November 14, 1985

The Honorable Stephen J. Markman
Assistant Attorney General
Office of Legal Policy
Department of Justice
Washington, D.C. 20530

Dear Mr. Markman:

In the Senate Judiciary Committee hearing on the nomination of Nicholas Tsoucalas to be a member of the Court of International Trade, the Customs and International Trade Bar Association testified. The testimony was informative but disquieting. The Bar Association made four points. We think all of them merit your attention.

First, the association pointed out that if Mr. Tsoucalas' nomination is confirmed, he will be the seventh of nine judges on this court from New York state. This lack of geographical diversity concerns the association.

Second, the caliber of the Court of International Trade judges needs to be as high as that of U.S. District Judges.

Third, experience in the practice of customs and international trade law should be considered a necessary qualification for candidates for nomination to that court.

Finally, the Customs and International Trade Bar Association, as the only national bar association with a specialty in this area, has not been brought into the nomination process for the Court of International Trade nominees.

We will be interested in your reaction to these points, and in your comments as to how the Justice Department plans to address them.

Sincerely,

Paul Simon
United States Senator

Charles McC. Mathias, Jr.
United States Senator

CM:smd

BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

STATEMENT OF FREDERICK L. IKENSON, CHAIRMAN, JUDICIAL SELECTION COMMITTEE, CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION, ON THE NOMINATION OF JUDGE HALDANE ROBERT MAYER TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

FREDERICK L. IKENSON
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MAY 13, 1987
[Filed May 11, 1987]

BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

STATEMENT OF FREDERICK L. IKENSON, CHAIRMAN, JUDICIAL SELECTION COMMITTEE, CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION, ON THE NOMINATION OF JUDGE HALDANE ROBERT MAYER TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

My name is Frederick L. Ikenson and I appear to comment on the nomination of Haldane Robert Mayer for appointment as Judge of the United States Court of Appeals for the Federal Circuit.

I am the Chairman of the Judicial Selection Committee of the Customs and International Trade Bar Association. The President of our bar association would have testified at this hearing, but a prior professional commitment required him to be out of the country today.

Our Association is a national bar association, well over a half-century old, whose members regularly practice before the Court of International Trade and its appellate court, the Court of Appeals for the Federal Circuit. It is not difficult to understand that our members are vitally concerned with the nominees to these courts and, in fact, we perform two related but distinct functions with respect to judicial appointments. One, from time to time, we recommend, for the consideration of the Executive Branch, persons believed by us to be qualified and experienced in international trade law. Two, we endeavor to evaluate the Executive's nominees and to provide our evaluation to your Committee.

With regard to our carrying out the evaluation function, I would like to take this occasion to make two brief points. First, as to the qualifications of Judge Mayer, the President of our bar association has already written to the

Chairman of your Committee advising that "[o]ur Board of Directors is unanimously of the opinion that Judge Mayer is 'Well Qualified' for this appointment." That opinion was based on the careful and thorough review of information which was available to us. As is obvious from our evaluation, we welcome and encourage Judge Mayer's confirmation.

Second, and notwithstanding our opinion on the nominee's qualifications, we feel obligated to inform you that our evaluation process continues to be encumbered by the Executive Branch's failure to cooperate with us. In carrying out our evaluation function, we attempt to interview judicial candidates and to collect and review relevant information regarding them — all in a timely manner so as not to delay the confirmation process. In part, we rely on a questionnaire, which we believe imposes what is at most a modest burden on the respondent but which is designed to provide us witn highly useful information. A copy of our currently used questionnaire for candidates for both the Court of International Trade and the Court of Appeals for the Federal Circuit is attached.

Regrettably, the Justice Department has consistently declined to provide us with the names of its judicial nominees at the time that it provides them to the American Bar Association, and, moreover, it has consistently discouraged its nominees from providing us with a response to our questionnaire. While Judge Mayer was cooperative with us and most cordial, he, understandably, was reluctant to respond to our questionnaire, given the Justice Department's counsel. We in fact had to rely on his public response to your Committee's questionnaire, which response was made available to us slightly over a month ago.

With due respect, we believe that the Executive's desire to spare its judicial candidates some inconvenience does not justify its advice regarding our bar association's inquiries. We genuinely believe that because of the knowledge, experience, and interest of our members, we are capable of providing your Committee with valuable assistance in its effort to determine whether to recommend confirmation of nominees to those courts empowered to decide international trade controversies. Under the circumstances, if you agree that you stand to be aided by our evaluations, we would ask that you so advise the Justice Department, inviting it to remove impediments to our work and, indeed, to cooperate with us in this important function.

CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION

Questionnaire for Candidates for the United States Court of International Trade and the United States Court of Appeals for the Federal Circuit

1. Please provide the Judicial Selection Committee with a copy of the questionnaire responses and data (include any writing samples, briefs, opinions or other documents) furnished by you to any other bar association in connection with the nomination under review, together with a copy of the questions to which you were responding.

2. Please identify any bar association, professional organization, trade association or other organization which you believe supports your judicial appointment.

3. Describe any significant community activities in which you have been involved during the past ten years.

4. Have you had any teaching or lecture experience? If so, briefly describe details.

5. Have you ever been a member of a committee of a bar association whose subject matter related to customs or international trade? If so, please list such committees, a brief description of your activities and whether you held any official positions on the committee(s).

6. Describe any litigated matters which you either personally handled or were involved in which related to customs or international trade law. Give citations if such cases in which you were involved were reported. (If more than five cases, limit your answers to the five most significant).

7. Describe any administrative matters which you either personally handled or were involved in that dealt with customs or international trade law. Please give a capsule summary of the substance of such matters and what you believe to be their particular significance.

8. Have you ever held any public office, elective or otherwise, that dealt with matters relating to customs or international trade law? If so, please briefly state details of the function of the office and your responsibilities with respect thereto.

9. Have you ever been an officer, director or otherwise engaged in a management position in any business or enterprise which, to a significant extent, involved customs or international trade? If so, briefly give the details of the nature of the business with respect to its trade aspects.

PLEASE REPLY TO: Frederick L. Ikenson, Chairman, Judicial Selection Committee,
1875 Connecticut Avenue, N.W., Washington, D.C. 20009

10. If you have authored or co-authored any books, articles, briefs or legal writings dealing with customs or international trade, please furnish copies.

11. State any other information or experience you have had in the public or private sector including organizations, professional associations, etc., relating to customs or international trade.

12. During the past ten years, have you or any immediate family member been involved in customs or international trade matters (other than ordinary matters related to personal travel) or with U.S. industry substantially affected by international trade? If so, please describe briefly.

13. Have you ever been involved as an advocate or lobbyist in connection with any customs or international trade matter? If so, please describe briefly.

JOSEPH R. BIDEN, JR., DELAWARE, CHAIRMAN

EDWARD M. KENNEDY, MASSACHUSETTS
ROBERT C. BYRD, WEST VIRGINIA
HOWARD M. METZENBAUM, OHIO
DENNIS DeCONCINI, ARIZONA
PATRICK J. LEAHY, VERMONT
HOWELL HEFLIN, ALABAMA
PAUL SIMON, ILLINOIS

STROM THURMOND, SOUTH CAROLINA
ORRIN G. HATCH, UTAH
ALAN K. SIMPSON, WYOMING
CHARLES E. GRASSLEY, IOWA
ARLEN SPECTER, PENNSYLVANIA
GORDON J. HUMPHREY, NEW HAMPSHIRE

MARK H. GITENSTEIN, CHIEF COUNSEL
DIANA HUFFMAN, STAFF DIRECTOR
DENNIS W. SHEDD, MINORITY CHIEF COUNSEL

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510

May 22, 1987

Mr. Frederick L. Ikenson, Esq.
Chairman, Judicial Selection Committee
Customs and International Trade
Bar Association
1875 Connecticut Ave., N.W.
Washington, D.C. 20009

Dear Mr. Ikenson:

Thank you for your testimony before the Senate Judiciary Committee on May 13 on nominations to the U. S. Court of Appeals to the Federal Circuit, including the pending nomination of Judge H. Robert Mayer.

In order to complete the record of this hearing, I would appreciate receiving your response to the enclosed additional questions. Please deliver your responses to the attention of the judicial nominations task force of the Committee, in Room SD-224 of the Dirksen Senate Office Building. If possible, please provide your responses by June 1, 1987. Thank you in advance for your prompt attention to this request.

Sincerely,

Howard M. Metzenbaum
United States Senator

SCREENING MECHANISMS

What mechanisms does your association use to evaluate nominees to the Federal Circuit? What is the composition of your screening committee? How are the members chosen? To whom do they report?

What are the principal sources of information on which you rely in your evaluations of judicial nominees? For example, do you solicit the nominee's response to a questionnaire? Do you conduct interviews of the nominee? How do you identify persons who may have information about the nominee's fitness?

NOTICE OF NOMINATION

When and how did your association first learn of Judge Mayer's nomination to the Federal Circuit? When did you begin your evaluation process?

Does your organization routinely learn of Federal Circuit nominations before they are formally made? If so, do you think this helps your organization to conduct a thorough and informative evaluation of the candidate? If not, do you think that your group could make a more meaningful contribution to the nominations process if it received earlier notice of potential nominations?

ROLE OF ABA

The American Bar Association investigates every nominee to the Federal Circuit, as well as to other federal judicial posts. Why isn't the ABA investigation, and the resulting evaluation, sufficient to inform the Judiciary Committee of the bar's views on each nominee to the Federal Circuit?

Do you agree with the view that a nominee who is qualified for appointment to one of the eleven regional circuits is equally qualified for appointment to the Federal Circuit?

It has been asserted that the information provided to the Senate as a result of ABA evaluations of judicial nominees is too brief to significantly help the Senate Judiciary Committee evaluate nominees. Do your organizations prepare more detailed evaluations, and do these evaluations include a discussion of the bases for the evaluations?

RELATIONS WITH JUSTICE DEPARTMENT

Mr. Ikenson, you stated in your written testimony that the Justice Department "has consistently discouraged its nominees from providing [your association] with a response to our questionnaire." What is the evidence for this assertion?

Do you know whether the Justice Department has discouraged nominees from cooperating with your investigative process in other ways? Do you know whether nominees have been advised not to cooperate at all with your efforts?

Would it be too burdensome to ask a nominee to make himself available for ABA investigation as well as investigation by other bar associations that may have an interest in the nomination? What steps do you take to insure that your investigation is not burdensome to the nominee?

CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION

June 1, 1987

Honorable Howard M. Metzenbaum
United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Dear Senator Metzenbaum:

Attached are my responses to the questions you sent me under cover of your letter of May 22, 1987. If these responses require further elaboration or clarification, I shall be pleased to supplement them or to make myself available for discussion with you or your staff.

Sincerely,

Frederick L.
Frederick L. Ikenson
Chairman, Judicial Selection
Committee

Enclosures

FLI/kp

PLEASE REPLY TO: Frederick L. Ikenson, Esq., Suite 1014, 1875 Connecticut Avenue, N.W.,

SCREENING MECHANISMS

Question: What mechanisms does your association use to evaluate nominees to the Federal Circuit? What is the composition of your screening committee? How are the members chosen? To whom do they report?

Answer: Our association relies on a screening committee to collect relevant information regarding judicial nominees and to report its findings to the Board of Directors.

Our screening committee, called the Judicial Selection Committee, currently consists of seven members of our bar association. They are:

Frederick L. Ikenson, Chairman
James S. O'Kelly, Deputy Chairman
David Busby
Joseph S. Kaplan
Robert V. McIntyre
Urban S. Mulvehill
Donald W. Paley

Each of the Committee members has had many years of experience in customs and international trade law.

The chairman of the Committee is elected by the members of the bar association. The other members of the Committee are appointed by the president of the bar association. In exercising his discretion in appointing members to this committee, the president consults with the chairman of the Committee and takes into account the interest and experience of persons willing to serve on the Committee.

Through its chairman, the Committee reports to the twelve person Board of Directors. The chairmen of each of the bar association's seven standing committees, which includes the Judicial Selection Committee, are elected to and serve on the Board. Also elected to and serving on the Board are the president, vice president, secretary, treasurer, and past immediate president of the bar association.

Question: What are the principal sources of information on which you rely in your evaluations of judicial nominees? For example, do you solicit the nominee's response to a questionnaire? Do you conduct interviews of the nominee? How do you identify persons who may have information about the nominee's fitness?

Answer: We rely principally on (a) the nominee's response to a questionnaire, (b) interviews of the nominee and of persons familiar with the character, works, and reputation of the nominee, and (c) our examination of materials published or written by the nominee. We solicit the nominee's response to a questionnaire which we devised specifically for nominees to the Court of Appeals for the Federal Circuit and the Court of International Trade. On at least one occasion when a nominee declined to answer our questionnaire, we were able to rely on the nominee's public response to the Senate Judiciary Committee's questionnaire.

We identify persons who may have information about the nominee's fitness primarily from the questionnaire response. The response will identify such persons or will lead to the identification of such persons. If the nominee is a judge or public official, persons possessing relevant information will include the nominee's colleagues, agency staff, and attorneys practicing before him or her.

NOTICE OF NOMINATION

Question: When and how did your association first learn of Judge Mayer's nomination to the Federal Circuit? When did you begin your evaluation process?

Answer: At some time during the summer of 1986, we learned of Judge Mayer's nomination from a member of the Federal Circuit Bar Association. Before communicating with Judge Mayer, we wished to have confirmation of his nomination. We promptly sought such confirmation from a cognizant Justice Department official but our request was politely refused. We were told that, prior to their transmittal to the Senate, the names of judicial appointments were and would be shared only with the Federal Bureau of Investigation and the American Bar Association.

In a subsequent conversation in late October, the Justice Department official advised us of his expectation that nominations to the Federal Circuit would be transmitted early in 1987. Although we still did not have confirmation of Judge Mayer's nomination, we decided to communicate with him in view of our concern that we would not have ample time to conduct our evaluation and present our report to the Senate Judiciary Committee. Thus, in late December, we wrote to Judge Mayer, requesting that he complete our questionnaire and that he meet with us.

Within days, Judge Mayer called to indicate his willingness to meet with us. However, he said that he would not feel comfortable answering our questionnaire since the Justice Department had discouraged him from responding to any bar association's questionnaire other than the American Bar Association's. We then determined that, without a questionnaire response, we would not be able to perform a satisfactory evaluation and we intended to so inform the Judiciary Committee. However, in April 1987, we gained access to the public version of Judge Mayer's response to the Judiciary Committee's questionnaire and we determined that we could go forward with the evaluation process, which we promptly did.

Question: Does your organization routinely learn of Federal Circuit nominations before they are formally made? If so, do you think this helps your organization to conduct a thorough and informative evaluation of the candidate? If not, do you think that your group could make a more meaningful contribution to the nominations process if it received earlier notice of potential nominations?

Answer: Our organization does not routinely learn of Federal Circuit nominations before they are formally made. Because of this, we are often deprived of any realistic opportunity to contribute to the nominations process. If we were to receive earlier notice of potential nominations and if we were to receive timely responses to our questionnaires, we are confident that we could make a more meaningful contribution to the process.

ROLE OF ABA

Question: The American Bar Association investigates every nominee to the Federal Circuit, as well as to other federal judicial posts. Why isn't the ABA investigation, and the resulting evaluation, sufficient to inform the Judiciary Committee of the bar's views on each nominee to the Federal Circuit?

Answer: Unlike the regional Courts of Appeals, the Federal Circuit is a national court with jurisdiction over special subject matters, including customs and international trade issues. The members of our bar association have substantial experience in the litigation of customs and trade disputes and are vitally concerned with the nominees to the Federal Circuit.

We are not satisfied that the ABA has the same degree of interest and we have no assurance that its final, terse judicial evaluation is sufficiently informed. In investigating nominees to the Federal Circuit the ABA does not consult with members of our Judicial Section Committee. Also, we are informed that its standing Committee on Federal Judiciary does not routinely consult with standing committees within the ABA whose members have particular knowledge and interest regarding the Federal Circuit.

We believe that we are able to supplement the ABA investigation with informed and more detailed evaluations of nominees' qualifications.

Question: Do you agree with the view that a nominee who is qualified for appointment to one of the eleven regional circuits is equally qualified for appointment to the Federal Circuit?

Answer: Yes. However, we also believe that experience in the substantive matters over which the Federal Circuit has jurisdiction, such as customs and international trade law, would be an asset to a nominee to the Federal Circuit. Indeed, we believe that Judge Mayer's qualifications have been enhanced by his years on the Claims Court -- not just because of the judicial experience but because of the experience he gained in subject areas of importance to the Federal Circuit. In a similar vein, the president of our bar association has recently written to the Justice Department to convey the bar's strong recommendation that judges of the Court of International Trade be given serious consideration for elevation to the Federal Circuit, as vacancies arise on that appellate court. Copies of that letter and the Justice Department's response are attached.

Question: It has been asserted that the information provided to the Senate as a result of ABA evaluations of judicial nominees is too brief to significantly help the Senate Judiciary Committee evaluate nominees. Do your organizations prepare more detailed evaluations, and do these evaluations include a discussion of the bases for the evaluations?

Answer: We conduct confidential evaluations of nominees, taking into account primarily intellectual ability and performance, temperament and demeanor. Our written reports to date have essentially set forth our conclusions regarding a nominee's fitness for the bench. In the future, we will be glad to submit detailed evaluations which contain nonconfidential discussions of the bases for such evaluations; further, we will be pleased to meet with Judiciary Committee staff to discuss every nominee to the Federal Circuit and the Court of International Trade and, if it will be viewed as helpful, we will endeavor to provide testimony on every such nominee.

RELATIONS WITH JUSTICE DEPARTMENT

Question: Mr. Ikenson, you stated in your written testimony that the Justice Department "has consistently discouraged its nominees from providing [your association] with a response to our questionnaire." What is the evidence for this assertion?

Answer: Over the last several years, nominees to both the Federal Circuit and the Court of International Trade have so informed us. Also, a cognizant Justice Department official has acknowledged this.

Question: Do you know whether the Justice Department has discouraged nominees from cooperating with your investigative process in other ways? Do you know whether nominees have been advised not to cooperate at all with your efforts?

Answer: Over the last several years, judicial nominees have informed us that the Justice Department has discouraged nominees from meeting with us. We do not know whether nominees have been expressly advised "not to cooperate at all with . . . [our] efforts". However, since nominees have been discouraged from responding to our written questionnaires and have been discouraged from meeting with us, it would appear that they have effectively been advised "not to cooperate at all . . . ."

Question: Would it be too burdensome to ask a nominee to make himself available for ABA investigation as well as investigation by other bar associations that may have an interest in the nomination? What steps do you take to insure that your investigation is not burdensome to the nominee?

Answer: It would not be too burdensome to ask a nominee to the Federal Circuit or to the Court of International Trade to make himself available for ABA investigation as well as investigation by our association. We do not endeavor to duplicate the ABA's investigation and, in fact, we have taken pains to keep any overlap to a minimum. In our questionnaire, (a) we ask for copies of questionnaire responses and data provided to other bar associations, and (b) we ask a modest number of questions which are principally designed to elicit information regarding the nominee's experience or background in customs and international trade law matters. The questionnaire, a copy of which was submitted with our written testimony, is short and our interviews of nominees have consistently been cordial and not at all time-consuming.

CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION
475 PARK AVENUE SOUTH
NEW YORK, N.Y. 10016
(212) 725-0200

DAVID D. ELLIOTT
PRESIDENT

April 3, 1987

The Honorable Stephen J. Markman
Assistant Attorney General
Office of Legal Policy
Department of Justice
Washington, D.C. 20530

Dear Mr. Markman:

Recently, the Chairman of our Judicial Selection Committee provided your Seth Liebman with a "judicial status" chart for the United States Court of Appeals for the Federal Circuit. Quite apart from the three current vacancies on that court, the chart reveals that three sitting judges are eligible for retirement now and three others will become eligible over the next three years. Under the circumstances, it appears quite likely that your office will be devoting continued attention to the nomination of candidates for that important court.

I am writing to you at this time to convey the strong recommendation of the Customs and International Trade Bar Association that your office give serious consideration to judges of the United States Court of International Trade (C.I.T.) in selecting candidates for the Federal Circuit. While the practice of "elevating" district judges to courts of appeals has not been uncommon among the various circuits, no judge of the C.I.T. (or of its predecessor, the Customs Court) in recent memory was appointed to the Federal Circuit (or to its predecessor on customs matters, the Court of Customs and Patent Appeals). It appears to us that the experience and knowledge gained by a C.I.T. judge stand to be positive qualities in a candidate for the appellate court and we would hope that you might share in that view.

Sincerely yours,

David D. Elliott

David D. Elliott
President, Customs and International
Trade Bar Association

PLEASE REPLY TO: 475 Park Avenue South, New York, New York 10016

U.S. Department of Justice

Office of Legal Policy

Assistant Attorney General

Washington, D.C. 20530

MAY 7 1987

David O. Elliott, Esquire
President, Customs and International
 Trade Bar Association
475 Park Avenue South, 25th Floor
New York, New York 10016

Dear Mr. Elliott:

Thank you for your recent letter recommending that judges on the United States Court of International Trade (CIT) be given serious consideration for elevation to the United States Court of Appeals for the Federal Circuit as vacancies arise on this court.

We appreciate your concern with regard to several vacancies on the Federal Circuit that may arise in the near future. As positions do arise on this court, we will make every effort to assure that qualified candidates with experience in various areas of the law are considered. It is important for the Federal Circuit Court of Appeals to continue to fulfill its vital objective with knowledgeable, well-reasoned opinions. Sitting CIT judges do possess valuable knowledge and experience. However, we cannot guarantee that any particular vacancy will be filled with a CIT judge.

Again, we appreciate your taking the time to express your concerns.

Sincerely yours,

Stephen Markman

Stephen J. Markman
Assistant Attorney General

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CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION

January 21, 1988

Hand Delivered

The Honorable Stephen J. Markman
Assistant Attorney General
Office of Legal Policy
United States Department of Justice
Washington, D.C. 20530

Dear Mr. Markman:

I enjoyed meeting with you on January 8. I believe that our discussion relating to the selection of judges for the Court of International Trade and the Court of Appeals for the Federal Circuit was valuable and constructive.

I would like to take this opportunity to confirm our discussion and agreement with respect to two specific matters. First, you expressed an interest in the Justice Department's acquiring a list of persons whom our bar association considers eminently fit to serve on either or both of the two courts. I assured you that we would give the matter careful consideration and that we would provide the Department with such a list. I repeat that assurance now.

Second, I shared with you our concern that we often do not know that a person is being considered for a judgeship until nearly the time that the nomination is made. You agreed that, in the future, the Justice Department would inform our bar association of prospective nominees to the CIT and the Federal Circuit at the same time that it informs the American Bar Association of such prospective nominees. This change in procedure will enable us to conduct a timely evaluation and to report our views to your Department before the nomination goes forward.

PLEASE REPLY TO Frederick L. Ikenson, Esq., 1621 New Hampshire Avenue, N.W.,
Washington, D.C. 20009

The Customs and International Trade Bar Association greatly appreciates your cooperation on these matters of such importance to us. Indeed, we look forward to working with the Justice Department over the years ahead in furtherance of what we are certain is our common goal: the appointment to the Court of International Trade and to the Court of Appeals for the Federal Circuit of the persons best qualified to serve on those courts.

Sincerely yours,

Frederick L. Ikenson
Chairman, Judicial Selection Committee

cc: David O. Elliott, Esq.
President, Customs and International Trade Bar Association

Senator SIMON. This concludes our hearing.

[Whereupon, at 3:13 p.m., the committee was adjourned.]

S. JAY PLAGER

Birth:	May 16, 1931	Long Branch, New Jersey
Legal Residence:	Indiana	
Marital Status:	Married	Ilene H. Nagel 3 children
Education:	1948 - 1952	University of North Carolina A.B. degree
	1955 - 1958	University of Florida College of Law J.D. degree
	1959 - 1960	Columbia University LL.M. degree
Bar:	1958 1964	Florida Illinois
Military Service:	1952 - 1955	United States Navy
Experience:	1958 - 1962	University of Florida College of Law Professor of Law
	1962 - 1977	University of Illinois College of Law Professor of Law
	1977 - 1986	Indiana University School of Law Dean (1977-1984) Professor of Law (1984-pres) (on leave of absence)
	1986 - 1987	Department of Health & Human Services Counselor to Undersecretary
	1987 - 1988	Office of Management & Budget Associate Director
	1988 - present	Office of Management & Budget Office of Information & Regulatory Affairs Administrator
Office:	Old Executive Office Building Room 246 Washington, D.C. 20503	
Home:	2728 Pine Lane, Bloomington, Indiana 47401 2501 Porter Street, NW, Washington, DC 20008 or	

To be United States Circuit Judge for the Federal Circuit

SENATE JUDICIARY COMMITTEE QUESTIONNAIRE

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

S. Jay Plager; Jay Plager; Sheldon Jay Plager; S.J. Plager

2. Address: List current place of residence and office address(es).

Indiana residence: 2728 Pine Lane, Bloomington, IN 47401

Maryland residence: Boone Creek, Box 542, Oxford, MD 21654

D.C. apartment: 2501 Porter Street, N. W., Apt. 815
Washington, D. C. 20008

Office:
Executive Office of the President
Office of Management and Budget
Office of Information & Regulatory Affairs
246 Old Executive Office Building
Washington, D. C. 20503

School of Law
Indiana University
Bloomington, Indiana 47405

3. Date and place of birth.

May 16, 1931
Long Branch, New Jersey

4. Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

Married to Ilene Hinda Nagel. (Nagel - maiden name.) Spouse's Occupation: Commissioner, United States Sentencing Commission, 1331 Pennsylvania Ave., N.W., Suite 1400, Washington, D.C. 20004, (202) 626-8530; and

Professor of Law, Indiana University School of Law, Bloomington, IN. (Dean Bryant Garth.)

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

University of North Carolina
Chapel Hill, N.C.
1948 - 1952; A.B. 1952

University of Florida College of Law
Gainesville, Florida
1955 - 1958; J.D. with high honors 1958

Columbia University
New York, New York
1959 - 1960; LLM 1961

6. Employment record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

FROM	TO	POSITION & SUPVSR	ADDRESS	TITLE
6/84	Present	Indiana University School of Law Dean Bryant Garth	Bloomington, IN	Prof. of Law (on lv of absence)
7/88	Present	Office of Information & Regulatory Affairs Richard Darman, Dir(OMB)	Washington, DC	Adminstrtr
8/87	7/88	Office of Mgmt & Budget James C. Miller,III, Dir.	Washington, DC	Assoc.Dir.
6/86	8/87	Dept. of Health & Human Services Don M. Newman,UndSec.	Washington, DC	Counselor to UndSec
(9/84	6/85	Stanford University School of Law Dean John Ely	Stanford, CA	Visiting Scholar)

(1/85	6/85	University of the Pacific, McGeorge School of Law Dean Gordon Schaber	Sacramento, CA	Visiting Professor) (part-time)
7/77	6/84	Indiana University School of Law V.P. Robert M. O'Neil V.P. Kenneth Gros Louis	Bloomington, Ind.	Dean & Prof.
(9/80	12/80	On leave at Cambridge Univ. & Rockefeller Found. Research Center Gareth Jones, Head	Cambridge, Eng. Bellagio, Italy	Visiting Fellow)
8/63	7/77	Univ. of Illinois College of Law Dean John E. Cribbet	Champaign, Ill.	Law Professor
(9/67	6/68	University of Wisconsin School of Law	Madison, Wisc.	Visiting Professor)
1/58	8/63	University of Florida College of Law Dean Frank E. Maloney	Gainesville, Fla.	Law Professor
6/52	6/55	U. S. Navy Various	Various	Ensign/Lt. JG

Note: parenthetical entries indicate activities while on leave of absence from primary employment.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

I entered the United States Naval Service in 1948 as a Midshipman, USNR, under the Holloway (Regular) Program. In June 1952, upon graduation from college, I was commissioned Ensign, USN, serial number 515185/1100, and ordered to active duty. My first two years on active duty were spent as Assistant Navigator, then Navigator, on the USS Sarasota, APA 204. I was then assigned to Commander Transport Amphibious Squadron 2, Little Creek, as Landing Control (Ship-to-Shore) Officer, where I remained until my release from active duty in June 1955.

I served in the active Naval Reserve for the next fifteen or so years, attaining the rank of Commander. I was Commanding Officer of several Naval Reserve Divisions, and served as Officer-in-Charge of an active duty Naval Reserve Center. In 1970 I concluded my naval service and was honorably discharged.

While on active duty I was detailed to the Naval Justice School at Newport, R.I., for training in the Uniform Code of Military Justice. Thereafter I served as Trial Counsel or Defense Counsel in a number of Special Courts Martial held aboard ship. My various Active Duty for Training periods during my reserve service included tours with both the operating fleet and with Naval Justice.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Holloway Fellow (U.S. Navy)
Phi Beta Kappa
Phi Kappa Phi
Order of the Coif
Editor-in Chief, Law Review
Graduated law school with high honors, first in class
Charles Evans Hughes Fellow, Columbia University

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give titles and dates of any offices which you have held in such groups.

American Bar Assn, Council of the Section of Administrative Law, Government Liaison, 1989 -.

Member, Administrative Conference of the United States, 1988 -.

Board of Directors, Indiana Continuing Legal Education Forum, 1977-84.

Board of Directors, Indiana Bar Foundation, 1977-84.

Member, House of Delegates, Indiana State Bar Association, 1977-84.

Member, Indiana State Bar Association

Member, Florida Bar

Member, Zoning Committee, Illinois State Bar Association, 1966-70.

American Law Institute, 1977-84.

American Bar Association

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

American Association of University Professors

Law and Society Association

Environmental Law Institute, Fellow

Association of American Law Schools:

- -- Chair or member, accreditation inspection teams, various dates
- -- Chair, Workshop Panel on Law and Social Science, 1984
- -- Member, Accreditation Committee, 1983-85
- -- Chair, New Deans Conference, 1977 and 1978
- -- Member, Committee on Sections, 1978-81
- -- Delegate to House of Representatives, 1977-84
- -- Chair, Section on Environmental Law, 1974

Honorary Life Member, Indiana University Alumni Association

University of Florida Alumni Association

University of North Carolina Alumni Association

Columbia Law School Alumni Assocation

Pi Lamba Phi

Chesapeake Bay Assn

Environmental Defense Fund

Federalist Society

Sierra Club

NRDC

Smithsonian Associate

Indiana University Friends of Music - Life Member

The Army and Navy Club

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Florida Supreme Court - 1958

Illinois Supreme Court - 1964

U.S. Supreme Court - 1981

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Books and Monographs

Revised edition, Florida Water Law, 1980 (with F.E. Maloney, R.C. Ausness, and B.D.E. Canter).

Social Justice Through Law -- New Approaches in the Law of Property. Foundation Press, 1970.

Water Law and Administration. University of Florida Press, 1968 (with F.E. Maloney and F.N. Baldwin).

Articles

The Institution of the Private Attorney General: Perspectives From An Empirical Study of Class Action

Litigation, 61 Southern California Law Review 353 (1988) (with B. Garth and I. Nagel).

Empirical Research and the Shareholder Derivative Suit: Toward A Better-Informed Debate, 48 Law and Contemporary Problems 137 (1985) (with B. Garth and I. Nagel).

RICO, Past and Future: Some Observations and Conclusions, 52 Cincinnati Law Review 456 (1983) (with I. Nagel).

State Regulation of Nontransportation Noise: Law and Technology 48 Southern California Law Review 1 (1974) (with R. W. Findley).

Legal Implications of the Failure to Meet Drinking Water Standards with Respect to Trace Metals, Proceedings of the 16th Water Quality Conference, 71 University of Illinois Bulletin 135 (1974).

Public Hearings under the Clean Air Act: Administrative Crucible or Polluters' Ploy, Proceedings of the First National Conference on the Clean Air Act 80 (Chapel Hill, N.C. 1973).

Policy, Planning, and the Courts, 37 Journal of the American Institute of Planners 174 (1971).

Judicial Review: Recent Decisions in Planning Law - 1969, 36 Journal of the American Institute of Planners 345 (1970).

Recent Decisions in Planning Law - 1968, 35 Journal of the American Institute of Planners 264 (1969).

The Planning/Land Use Control Relationship: A Look at Some Alternatives, 3 Land-Use Controls Quarterly 26 (1969).

Participatory Democracy and the Public Hearing - a Functional Approach, 21 Administrative Law Review 153 (1969).

Multiple Interests in Riparian Land, Subdivision Platting, and the Allocation of Riparian Rights, 46 Journal of Urban Law 41 (1968) (with F.E. Maloney).

Interference with the Public Right of Navigation and the Riparian Owner's Claim of Privilege, 33 Missouri Law Review 608 (1968).

Some Observations on the Law of Water Allocation as a Variable in Industrial Site Location, 1968 Wisconsin Law Review 673.

Emerging Patterns for Regulation of Consumptive Use of Water in the Eastern United States, 43 Indiana Law Journal 383 (1968) (with F.E. Maloney).

Diffused Surface Water: Scourge or Bounty, 8 Natural Resources Journal 72 (1968) (with F.E. Maloney).

The XYZ's of Zoning, Planning 271 (ASPO 1967).

Water Pollution - Attempts to Decontaminate Florida Law, 20 University of Florida Law Review 131 (1967) (with F.E. Maloney and F.N. Baldwin).

Florida's Ground Water: Legal Problems in Managing a Precious Resource, 21 University of Miami Law Review 751 (1967) (with F.E. Maloney).

The Spouse's Nonbarrable Share: A Solution in Search of a Problem, 33 University of Chicago Law Review 681 (1966).

The Politics of Planning for Urban Redevelopment: Strategies in the Manipulation of Public Law, 1966 Wisconsin Law Review 725 (with J. Handler).

Florida's Lakes: Problems in a Water Paradise, 13 University of Florida Law Review 1 (1960) (with F.E. Maloney).

Severance Damage in Eminent Domain Proceedings, 10 University of Florida Law Review 1 (1957) (with A.V.Kendall).

Florida's Streams - Water Rights in a Water Wonderland, 10 University of Florida Law Review 294 (1957) (with F.E. Maloney).

Other Published Studies

Report of the Task Force on Medical Liability and Malpractice. Department of Health and Human Services, Washington D.C. 1987 (co-chairman).

Controlling Waterfront Development. Public Administration Clearing Service, Studies in Public Administration No. 30 (Florida 1968) (with F.E. Maloney).

Social Elements and Relationships within Urban Systems: Implications for Action and Research Programs - The Role of Law. Center for Urban Studies, University of Illinois, Discussion Paper Service, No. 7 (1968).

Control of Noise from Motor Vehicles, Report of the Task Force on Noise. HEQ Doc. 74-42, 1974 (Chairman of Task Force and Project Director).

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent health. Last physical exam completed June 2, 1989.

14. Judicial Office (if applicable): State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None

15. Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appeallate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

N/A

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Administrator, Office of Information and Regulatory Affairs, OMB - 7/88 to present, appointed.

Associate Director, OMB - 8/87 to 7/88, appointed.

Counselor to Under Secretary, HHS - 6/86 to 8/87, appointed.

Member, Urbana, Illinois, Planning Commission - 1966-70, appointed.

Member, later chairman, Gainesville, FL, Planning

Commission - 1962-63, appointed.

Unsuccessful candidate for County Committeeman, Urbana, Illinois, 1965 (date approx.).

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

2. whether you practiced alone, and if so, the addresses and dates;

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Chronological History of my Law Practice and Experience

Law School and Teaching Law, University of Florida

Following completion in 1955 of my three years on active duty in the Navy, I entered the University of Florida College of Law, Gainesville, Florida. I graduated first in my class, with high honors, in 1958. Upon graduation I was offered, and accepted, a position on the permanent faculty of the College. The Dean then was Henry Fenn; he was succeeded by Dean Frank Maloney. Dean Maloney is deceased; Dean Fenn has retired.

Graduate Work at Columbia Law School

I remained at Florida for the next five years, with the exception of a year on leave spent at Columbia University in New York as the Charles Evans Hughes Graduate Fellow in Law. The chairman of the Graduate Committee at Columbia was Professor Walter Gellhorn, who, although retired, is still active at Columbia; my thesis advisor was Professor (later Dean at Stanford Law School) Charles Meyers, now deceased. I completed my studies and was awarded an LL.M. from Columbia in 1961. My graduate thesis, an empirical study of wealth transmission at death, was published by the University of Chicago Law Review.

Professor of Law, University of Illinois

In 1962 I was invited to visit for a year as a member of the law faculty at the University of Illinois College of Law, Champaign, Illinois. Subsequently I was invited to join the permanent faculty at Illinois, which I did, and remained there until 1977. As described more fully below, my courses included Administrative Law and administrative law-based courses such as Land Use Planning and Zoning and Environmental Law, as well as various Property Law courses. My research and service activities took on a heavy emphasis on law and science and law and technology (this is detailed more fully below).

The Dean at Illinois was Russell Sullivan, now deceased. He was succeeded by John E. Cribbet, who was Dean most of the years during which I was at Illinois. He subsequently became Chancellor of the campus, is now retired, but continues to live in Champaign, Illinois.

Dean, Indiana University School of Law

During these years various deanship opportunities arose. In 1976 I was approached for the second time by Indiana University regarding the deanship of the law school at its main (Bloomington) campus. In the Spring of 1977 I accepted appointment as Dean and Professor of Law at the Indiana University School of Law, Bloomington, effective with the beginning of the 1977-78 academic year, and continued in that capacity until 1984. The Vice President of the Bloomington campus (equivalent of Chancellor) at that time, and the person who recruited me, was Robert M. O'Neil, now President of the University of Virginia. The President of Indiana University was John W. Ryan, now retired and living in Bloomington. I worked closely with both during my years as Dean. O'Neil was succeeded as Vice-President (and now Chancellor) by Kenneth R.R. Gros Louis.

In the Spring of 1984, upon concluding seven years as Dean -- having rebuilt the faculty, the majority of which were hired during my tenure, and having brought to fruition a major expansion and complete rebuilding of the physical plant -- I stepped down and returned to full-time teaching. I then took the next academic year (1984-85) away as a Visiting Scholar at Stanford Law School, California (the Dean then was John Hart Ely. I returned to Bloomington for the academic year 1985-86.

Counselor to the Under Secretary, HHS

In the Spring of 1986 I was offered the post of Counselor to the Under Secretary of the U.S. Department of Health and Human Services, in Washington. Arrangements were made with the University under the Federal Intergovernmental Personnel Act to have me detailed to the Federal Government in order to assume that post, which I did in the Summer of 1986. The Under Secretary was the Honorable Don M. Newman (he is no longer with the Department, but lives in Washington). The Secretary was Dr. Otis R. Bowen, now retired, living in Bremen, Indiana.

Associate Director, OMB

My activities as Counselor to the Under Secretary brought me into contact with people in other agencies, in the Congress, and with officials in the White House. In the Spring of 1987 I was approached by OMB concerning the position of Associate Director of the Office of Management and Budget, Executive Office of the President, with responsibilities for Human Resources (Health and Human Services, Education), Veterans, and Labor. I assumed that position in August 1987. James C. Miller, III, was the Director of OMB.

Administrator, OIRA

I was nominated in the Spring of 1988 by President Ronald Reagan to be the Administrator of Information and Regulatory Affairs in OMB. Upon confirmation by the Senate in July 1988, I assumed that post. I was subsequently asked by the Bush Administration to continue in the post, which I have done, arrangements having been made with Indiana University for an extended leave of absence. I have also been designated Executive Director of the President's Council on Competitiveness, chaired by Vice President Quayle. The current Director of OMB is Richard Darman (395-4840).

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

The General Character of my Law Practice and Legal Experience

1952-55. As noted in my answer to question 7 regarding military service, during this period I served as Trial Counsel (prosecutor), mostly, and occasionally as Defense Counsel in courts martial held in the commands with which I was associated.

1958-62. In the early 1950s a number of my immediate family had settled in Florida, and my choice of law school was premised on the expectation that I would enter the private practice of law there. As described above, upon graduation from law school in 1958 I deferred that move to accept a position on the law faculty at the University of Florida. My teaching subjects were primarily in the field of property law, including real and personal property, future interests, land use planning, and natural resources law.

[NOTE: For the next twenty or so years my professional work centered around that of a law professor - teaching and lecturing, research and writing, and public service within the university community and the broader community as well. As a general proposition, the several universities with which I was affiliated during these years permitted outside activity related to one's professional work. This was true whether the work was pro bono or for remuneration, so long as it did not interfere with one's primary responsibilities to the academic enterprise, and, as a general rule, did not exceed one day a week. However, the private practice of law, with regular clients, was thought of as inconsistent with full time employment as a law professor.

In the following pages I describe my professional work over these years, with emphasis on my public service and other outside activities. It should be understood that throughout this period, except as specifically noted, I maintained a position as a full time law professor and lecturer; my bibliography, question 12, above, reflects my activity in legal research and publication.]

At the time of my appointment to the law faculty of the University of Florida, and thereafter, I was heavily involved, along with Professor, later Dean, Frank Maloney, in working with the State of Florida in the development of the State's water resources program. I subsequently served as Special Counsel to the Florida Department of Water Resources. In this capacity I advised on statutory drafting and regulatory development. I also gave advice on the potential legal challenges to the State's authority to regulate its water resources, and on actions to lessen that risk.

With Dean Maloney I became very interested in the relationship of law and science, and in particular the incongruity between the historical body of water law doctrine and the scientific understanding of what had become known as the hydrologic cycle. The problem was how to reconcile these conflicting understandings in the context of an administrative structure charged with protecting the public interest. We published a series of studies which culminated in the book entitled "Water Law and Administration - the Florida Experience," in 1968.

As is not uncommon for law teachers, from time to time I advised lawyers - often former students - on cases they currently were handling. This ranged from counseling on negotiation and trial strategies to preparation of letter opinions or briefs on more complicated issues of law. Occasionally this involved application of arcane future interests rules or trusts law, but more often dealt with natural resources and land development matters. In one case, on request I assumed representation of a land developer charged with tax fraud; the case was ultimately settled at the Tax Appellate level in my client's favor.

More often my time was spent advising State and local governments on legal issues related to natural resources and land development matters. After working with the City of Gainesville, Florida, regarding its land development problems, I was appointed a member and then chair of the City Planning Commission.

1963-70. With the move from the University of Florida to the law faculty of the University of Illinois came a shift in the focus of my professional interests, and with it an evolution in my teaching and practice activities. I continued to teach in the property field, but the emphasis moved toward the public law side, particularly land use planning and zoning. With that change in emphasis came an additional concern for administrative law aspects, so that I increased the administrative law component in my teaching portfolio.

An outgrowth of this was the development, at my initiative, of the Office of Environmental and Planning Studies within the College of Law. This Office served as the focal point for studies in law, technology, and public policy in the areas of environment, land use planning, zoning, and related administrative, regulatory, and statutory matters. The Office brought together faculty and students from law, engineering, and other natural and social science disciplines. I served as Director of the Office.

My interest in the area of law and technology reflected itself in other ways as well. Even at that early date, the University of Illinois had a leading computer science program. Working with that unit, I developed one of the original computer-based teaching programs, designed for self-teaching of future interests rules (a subject dear to the heart of every first year law student). I later brought to the campus a computer-based teaching "game," called Metro-Apex, developed at the Universities of Michigan and Southern California. The program involved law students, planning students, engineering students, and others, and revolved around a computer-simulated urban community with events changing over (computer-simulated) time. The program became a popular credit course and was cross-listed in law and several graduate disciplines. Independent of this, and at the request of the Engineering College, I was given a joint appointment in law and engineering in order to participate in a multi-year program in engineering education sponsored by the Sloan Foundation.

Following enactment in the early 1960's of legislation in Illinois establishing the Northeastern Illinois Metropolitan Area Planning Commission, I became Special Counsel to the Commission to assist in the development of a regional plan for Metropolitan Chicago and the surrounding five counties. Under the statute, prior to adoption of its regional plan the Commission was required to hold public hearings. I was retained to develop and supervise a public hearing process that would provide opportunity for full public involvement and meet statutory and common law requirements.

This ultimately led to an elaborate series of regional hearings over the course of two years. The process culminated in a capstone hearing in Chicago and then adoption of a final metropolitan area plan by the Commission.

During this period I was active in state bar matters in my area of work, serving as a member of the Zoning Committee of the Illinois State Bar Association. I was also active in local government matters; I served as a member of the City of Urbana Plan Commission from 1966 to 1970.

And as before, I continued from time to time to provide advice to other lawyers regarding complex legal matters within my particular areas of expertise. In one case I assisted local counsel in the handling of the legal issues involved in a major land development and rezoning matter in northern Illinois. The matter eventually went to the Illinois Court of Appeals, where, at counsel's request, I handled the briefs and oral argument. My records of this case are no longer available, so that I cannot provide more detail.

1970-77. This period marked yet a further evolution in my professional work. Given my long-standing interest in law and science, and its relationship to administrative and judicial decision making, I was invited to participate in the first Airlie House Conference on the environment. Out of this conference emerged a whole new subject area called Environmental Law. In addition to including the subject as an area of academic work, I became involved in a number of related professional activities. I was asked by the Administrator of the U.S. Environmental Protection Agency, William Ruckelshaus, to serve on the National Air Pollution Manpower Development Advisory Committee, which I did for four years. I also served as a member of the Federal Hearing Panels on a National Noise Abatement Program for the US EPA Office of Noise Abatement and Control, and subsequently as legal consultant on their National Airport Noise Abatement Program.

About this same time I became actively involved in the work of the newly-created Illinois Pollution Control Board and the Illinois Environmental Protection Agency. I provided legal advice and, working with teams of students, background memoranda on various aspects of the State's developing environmental program.

These State and Federal interests coalesced in 1974 with the establishment of the Illinois Task Force on Noise, under the auspices of the Illinois Institute for Environmental Quality. I served as Chair of the Task Force and project director, and as senior legal counsel.

The Task Force was a multi-disciplinary unit combining law, engineering, economics, and other scientific disciplines. It was headquartered at the University. Our assignment was to design and develop the legal and technical bases for a state program addressing the problems of airport, railroad, automobile, and non-transportation noise. We developed technical studies on the basis of which we prepared legal and regulatory proposals, organized hearings, provided expert witnesses, and supported the programs once adopted with legal and technical advice.

Here again was an opportunity to bring together historical and emerging legal doctrines with a highly technological field, and to try to blend them into a legal regulatory and decision structure. The work focused on transportation noise areas, such as airport noise with its added complexity of federal-state relationships and problems of preemption, and on non-transportation noise as well. For example, the Task Force's proposals contained in its report on Control of Noise from Motor Vehicles (1974) formed the basis for major regulatory initiatives by the Illinois Pollution Control Board.

A more theoretical assessment of the legal-technological dimensions of the non-transportation noise field is contained in a study published by the University of Southern California Law Review entitled "State Regulation of Nontransportation Noise: Law and Technology," which I co-authored with Professor Roger Findley, a member of the Task Force.

As suggested by the above, the bulk of my free time - i.e., time not devoted to teaching, academic research and writing, and other university obligations - was absorbed by my legal consulting for state and federal governments. I did participate in a number of Bar and other conferences, particularly in the area of airport noise, and provided consultation and advice to lawyers with special legal or technical problems. This included a case in Bradenton, Florida, and one involving the Cleveland-Hopkins International Airport. (See Question 18, below, for more detail on the latter.)

One other relevant activity should be mentioned. Under Illinois law, cases of alleged violations of pollution regulations and law were prosecuted by the Illinois EPA, and decided by the Pollution Control Board. Due to the limited size of the Board, hearings on the cases were held before hearing officers appointed by the Board. The Board would then decide the cases on the basis of the record made at the hearing. I was appointed by the Board as one of its hearing officers, and from time to time heard cases for the Board.

1977-84. This period in my professional life was dominated by the demands of my position as Dean of the Indiana University School of Law. In addition to my duties as Dean, I continued to teach courses in property, environmental, and administrative law. While the intermittent nature of the activity in the Cleveland-Hopkins case, described below, allowed me to continue as counsel, I declined other outside professional employment as such.

Much of my professional work during this period was devoted to State Bar and Bench activities. I was a member of the House of Delegates of the Indiana State Bar Association, a member of the Board of Directors of the Indiana Bar Foundation, and a member of the Board of Directors of the Indiana Continuing Legal Education Forum. I worked closely with the Indiana Supreme Court on matters affecting qualifications and licensing for the Bar.

During this period I was also active in various other professional associations. For the Association of American Law Schools I served as chair of the Environmental Law Section, as delegate to the House of Representatives, as chair of the New Deans Conference, as a member of the Accreditation Committee, and as chair of the Workshop Panel on Law and Social Science.

My major research activity grew out of a grant from the National Science Foundation. The grant, awarded to me and two colleagues in 1983, was for an empirical study of lawyers and clients in class action litigation. We devoted the summers of 1983 and 1984 to empirical field studies of class actions, including review of hundreds of cases filed in the Federal Court of the Northern District of California. Major findings from this study were published in 1985 (Law and Contemporary Problems), and 1988 (Southern California Law Review).

1985 to present. With my move to the Federal Government in 1986 I began a new phase in my career. Significant outside professional activities were no longer possible; the responsibilities imposed precluded such activity, even if permissible.

My first position was Counselor to the Under Secretary of Health and Human Services. Among my responsibilities was the formulation and rendering of advice to the Under Secretary relating to policy development that cut across program lines or which was not well defined in any existing statutory authority. On behalf of the Under Secretary I handled contacts and negotiations with key officials of the Government, representing the Department in discussions with staff members in the Executive Office of the President, including the White House staff, Domestic Policy staff, and the Office of Management and Budget, and with members of Congress and Congressional staffs.

Within the Department, one of my primary responsibilities was reviewing and advising the Under Secretary and Secretary regarding the appropriateness of regulatory initiatives proposed by the several operating agencies in the Department. I organized and participated in discussions among operating and staff divisions regarding the development of particular regulations. All proposed regulations submitted to the Secretary for signature were first reviewed in my Office for substantive and procedural sufficiency, and for consistency with the Secretary's program.

At the request of the Secretary, I co-chaired the Secretary's Task Force on Medical Liability and Malpractice, with Dr. David Sundwall, Administrator of the Health Resources and Services Administration. The purpose of the Task Force, the membership of which included most of the Assistant Secretaries and other key senior officials of the Department, was to evaluate the state of the law and the status of medical science as they relate to malpractice issues, and to make recommendations for national policy. The study proved to be most challenging -- and another opportunity to address the relationship of law, in this case tort law, and science, here medical science. The context this time was that of the Federal Government's role in an area -- tort liability and professional licensing and training -- traditionally reserved to the states. The Task Force completed its work and the Report was issued in 1987.

As described previously, I left the Department at the request of the Director of the Office of Management and Budget in order to become Associate Director of OMB, responsible for the budget and programs of the Department of Health and Human Services, the Department of Education, the Department of Labor, the Veterans Administration (now a Department), and twenty-six independent agencies in the Federal Government. This involved oversight responsibility for approximately forty percent of the Federal budget (about $ 530 Billion annually).

In addition, my duties included representing the Director in dealing with officers of Executive Branch agencies, White House officials, and the Congress on matters within the purview of the office, as well as with State and local officials. I supervised a staff of approximately sixty budget analysts, economists, and related professionals, plus support staff.

After approximately a year, I was appointed by the President, with confirmation by the Senate, to my current position, Administrator of the Office of Information and Regulatory Affairs. In this position I am responsible for Presidential review of regulations proposed by the various Executive Branch agencies; for review and approval of proposed information collections by all Federal agencies; for overall Federal information management policy; and for coordination of the Government's statistical policy.

Presidential review of agency rulemaking is conducted by my Office pursuant to the requirements of Executive Order Nos. 12291 and 12498. This requires that Executive Branch agencies submit proposed rulemakings, at both NPRM and final stages, to this Office for determination of whether the proposals conform to the criteria of the Orders.

Review and approval of proposed information collections is conducted under the authority of the Paperwork Reduction Act of 1980. This includes review and approval authority for surveys, questionnaires, required forms, and other information collections, as well as other disclosure and reporting requirements imposed by Federal agencies. Many of these collection requirements are contained in regulations and rulemakings. As part of this process, we administer the Government's Information Collection Budget, which manages and allocates some two billion hours of paperwork burden annually imposed on the citizens of the country.

In addition, the Office is responsible for the Government's information management policies. For example, we review and advise on all proposals for the development of major automatic data processing systems in the Government, establish and monitor agency implementation of the Government's information distribution policy, and supervise implementation of the Computer Security Act. The Office is also responsible for coordination of the Government's statistical policies; the Government's Chief Statistician is one of my senior deputies.

I work closely with the senior officials of the major regulatory agencies, as well as officials within the Executive Office of the President. On matters within the purview of the Office, I represent the Administration at national and international conferences, and in dealings with the Congress, including testifying before relevant Congressional committees.

I am assisted by a staff of about sixty-five professional and support personnel. The staff also assists me in my capacity as Executive Director of the President's Council on Competitiveness, chaired by Vice President Quayle. By appointment of the President, I also serve as a government member of the Administrative Conference of the United States.

My background in administrative law and in law and technology has proven to be of great value to me in this office. The combination of broad regulatory compass and specific responsibilities in areas such as information technology and economic competitiveness has involved me in matters as diverse as intellectual property rights, patent and other protections for computer software, biotechnology and the incentive environment for R&D, risk assessment and risk management, moving federal research and development to the marketplace, and so on. This listing illustrates only a few of the broad policy matters with which my office is generally involved.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

2. What percentage of these appearances was in:

(a) federal courts;

(b) state courts of record;

(c) other courts.

3. What percentage of your litigation was:

(a) civil;

(b) criminal.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

5. What percentage of these trials was:

(a) jury;

(b) non-jury.

Court Appearances and Litigation

For the reasons explained above, my personal court appearances have been limited and very occasional. I noted previously the occasion on which I handled the appellate court matter. I describe below the only trial court case which I have personally handled. Both were in state courts; both were civil matters; no jury was involved.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;

(b) the name of the court and the name of the judge or judges before whom the case was litigated; and

(c) the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

As explained in my answer to question 17 b., my involvement in an active legal practice, and particularly a litigation practice, was limited by my professional obligations to the universities with which I was affiliated, including the proscription against general private practice. I noted in Question 17 the zoning case which I handled in the Illinois Court of Appeals.

One exceptional case arose in which I found myself directly involved in handling the litigation. The case was styled Diane Manaugh Bell v. Illinois High School Association, Sixth Judicial Circuit, Illinois, docket no. 73-C-151, litigated in 1973.

Because of the special circumstances involved, I undertook to represent a young woman student at Urbana High School who wished to participate in varsity cross-country running. Under the rules of the Illinois High School Association, to which the school belonged, women could not compete on varsity teams with men. Since the only team fielded by the school had men on it, she was precluded from participation.

The girl's parents, whom I knew personally, were not able to obtain private counsel. The local school board, although sympathetic to her cause, was unwilling on its own initiative to directly challenge the State Association. (The school board later joined the case on the side of plaintiff.)

I took the case as a pro bono matter because of what I considered to be its great public importance. When negotiations failed to produce a satisfactory outcome, I filed a class action against the Association and its member schools on behalf of all women students, charging the defendants with violations of State and Federal constitutional protections.

The case was tried before the Circuit Court, Judge Roger H. Little (deceased), presiding. Following a lengthy trial, the court decreed that public schools could not deny equal opportunities to women to engage in varsity sports of this type; they had to either allow them to participate with men or provide equal programs for women.

Defendants were represented by John G. Poust, Chicago, and Hurshal Pummelson, Champaign. I handled all aspects of the case, before, during, and post trial, on behalf of plaintiff Diane Bell; co-counsel of record for plaintiff Urbana School Board was Harold Miller. An appeal was filed by defendants but was withdrawn following settlement. (Case number and certain other details of the case were provided to me courtesy of Judge Harold Jensen of the Circuit Court.)

As a consequence of this case, one of the early successful cases in this area, the ISHA revised its rules and the member schools were free to open school sports to all qualified individuals. I have been told that a number of lawyers in other states who learned of this case used the briefs and related materials in suits they brought.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. In this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

The most significant legal activity I have pursued in my lifetime has been the education of generations of law students and lawyers. I initially intended that, upon graduation from law school, I would follow in my father's footsteps as a practicing member of the Bar. Once having responded to my alma mater's invitation to teach the law, however, my career for the next twenty years was devoted to that activity.

As a teacher, my role was not confined to the classroom, although that is the primary student forum, particularly for first year law students. (I have taught the first year Property course throughout my academic career.) An important part of the educational activity of a law professor is participation in Bar and public programs, and in publication of scholarly work addressed to significant legal issues. I have done both, as described above, and as evidenced in my list of published writings (see Question 12).

Perhaps a second most significant legal activity was the seven years I spent as a law school Dean. This was an opportunity not only to provide educational leadership to a particular school and to its aspirations for academic excellence, but also to participate in the fashioning of national educational policy.

By noting these two as the most significant legal activities I have pursued, I do not suggest that service as a federal government official is of less importance. I consider myself very fortunate to have had the opportunity to serve in that capacity, which in my case involved a substantial administrative as well as legal dimension.

The question asks also about significant litigation which did not progress to trial. In Question 17, above, I noted my participation over a period of time in what I called the Cleveland-Hopkins case. While the case was handled without direct judicial involvement, at least as to the central issues, it was a technically and legally complicated case, and continued for some years.

The City of Cleveland, owner and proprietor of the Cleveland-Hopkins International Airport, became engaged in an extended dispute with the surrounding suburban communities over the noise impact of the airport's operations. The communities believed that the City was deliberately "dumping" the noise on the suburbs rather than on the voting wards of the City. The City denied that it had any responsibility, claiming that it did not have technical control over the movement of the aircraft, which it viewed as a shared responsibility of the carriers and the Federal Aviation Administration.

At the request of local counsel, I represented the organization of suburban communities in the dispute, and served as head negotiator. Extended negotiations were undertaken over a period of many months. Ultimately these negotiations led to a settlement involving the development and implementation of an area-wide airport noise abatement program in which the carriers, the Federal Government, and local interests on both sides participated. This required the design of noise corridors and aircraft movement programs meeting federal safety and technical requirements, the development of legal structures consistent with federal and state laws, and, most difficult of all, obtaining the concurrence of official and unofficial political entities and groups in all of the affected communities.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I currently hold a tenured professorship at Indiana University School of Law, Bloomington, Indiana; I am on leave without pay.

I have a vested financial interest in a pension plan under the auspices of the University of Illinois, as a consequence of my former employment there; contributions to the plan have not been made since I left the University. I have a small amount in a pension account with the American Bar Association (ABRA) program. I also have a vested financial interest in a pension fund

(TIAA-CREF) managed through Indiana University. No contributions have been made to the fund since my appointment to my present position.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I do not at present foresee any potential conflicts of interest from any of my financial arrangements. Other than the pension funds noted above, my intangible assets are invested in money market funds. Should any potential conflicts arise, I will consult the appropriate Judicial ethics officials and recuse myself in any case that presents a conflict or would reasonably appear to do so.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I believe it is permissible for judges to teach, consistent with their other duties. Assuming the workload permits, I might teach a course from time to time at a law school, including Indiana University.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Copy of financial disclosure report, dated May 15, 1989, attached.

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

Copy attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No, other than as noted in question 16 when I ran for County Committeeman.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have always believed that it is incumbent upon lawyers generally and especially those of us in legal education to ensure that the legal interests of the disadvantaged were addressed, both in legal education itself, and in the larger community. I was an early advocate for minority admissions, and played an active role in the development of the Illinois law school's minority admissions program. This included sponsorship of the national summer program for minority law school recruiting.

One of my early major publications was a coursebook entitled "Social Justice Through Law -- New Approaches in the Law of Property," published by Foundation Press in 1970. This book was used in a number of law schools to supplement the existing casebooks then in use in the basic property courses. The coursebook had chapters on decent housing and the low income tenant, dealing with the emerging law on warranty of habitability and rent withholding; on fair housing and the new attacks on housing discrimination by federal, state, and local governments; on defenses against discriminatory practices in real estate financing and sales; and materials on snob zoning and environmental defense. The book was designed to bring to the law school classroom materials of direct interest to and impact upon minorities, materials which at that time were not part of traditional property courses, and which had not yet begun to appear in the casebooks.

As described in Question 18, above, a major litigation which I undertook while at the University of Illinois involved vindication of women's rights to equal treatment in education, in this case participation in varsity sports.

As Dean of Indiana University Law School one of my first initiatives was the development of an organized law school minority recruiting and retention program. The program had several thrusts, including active recruiting of qualified minority students through personal visits by law school personnel to undergraduate campuses, targeted financial assistance, and provision of special tutorial assistance and remedial work as individually needed.

I was successful in hiring as my first staff appointment a young black lawyer from Columbia University to be the new dean of admissions. Through his efforts the School's minority enrollment tripled in a few short years, and for a time the percentage of minority students in the Law School was higher than the percentage of minority students in any other major academic unit of the University. A later addition to the faculty was the appointment of a professor from Yale Law School who became one of the first, if not the first, tenured black professors at Indiana University. (He later served as Dean of the Howard University Law School.)

Throughout my career I have devoted time and effort, both personally and in my various professional capacities, to advancing the cause of equal access and equal opportunity for minorities and women in legal education and in the legal profession.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

I do not now belong, nor to my knowledge have I ever belonged, to an organization of the type described.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no selection commission as such for the Federal Circuit.

To my knowledge, the process of my selection began with some informal discussions during the winter of 1988-89 among several White House staff, at which I was present, concerning future government positions following Administrator of OIRA. This included possible judicial appointment. I subsequently met with personnel in the Department of Justice, where we discussed specifically an appointment to the Federal Circuit.

Some time thereafter I was advised that my candidacy for the Federal Circuit had been approved by the Administration's Judicial Selection Committee. Shortly after, I met with a representative of the Department of Justice, who has since handled with me the process of completing the multiple forms necessary for the several investigating and reviewing organizations. Following my formal nomination, additional Justice Department personnel have been involved in advisory roles.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the juducial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The questions posed raise challenging and fundamental issues. Underlying all of the specific issues is the basic question of commitment to the Constitutional construct of separation of powers: that is, the assignment of distinct pieces of the total of government power to three separate but linked branches of government.

The fear, shared by the Founders, of unlimited government power being vested in one or a few officials has over the course of history led to attempts to construct mechanisms that would control that power. The solution arrived at by the Founders, and incorporated into our Constitution, is to divide government power into three functional areas -- executive, legislative, and judicial. Implicit in that separation, made explicit by custom and judicial construction over the years, is that the officials of one branch do not belong to, or behave as if they belong to, another branch.

This Constitutional construct has served our Nation well during some 200 years. Those who are privileged to serve the Nation in positions of responsibility in the government, it seems to me, have an unwaivable obligation to honor that construct. To say this is not to ignore or underestimate the problems attendant in this process.

Each of these three functions contains the seeds of the others. The compartments are not, and cannot be, watertight. Some legislative functions may in some circumstances include investigation and law enforcement; some judicial functions may contain elements of administrative activity; and some executive functions have significant law giving (for example, through rulemaking) dimensions. The essential point is that those overlapping activities should not be pursued for their own sake, but only when essential to the mission of that branch of government; and they should be strictly limited in scope and frequency to those essential cases.

Turning then to the specific issues raised, it is my view that the appropriate function of the Federal judiciary is the one defined for it by Article III of the Constitution -- the resolving of cases and controversies. To the extent that engaging in "problem-solution" rather than "grievance-resolution" implies a reaching out to craft legislative-type solutions to social problems, rather than the resolution of specific cases before it, that is not an appropriate part of the judicial function.

Jurisdictional requirements such as standing and ripeness are ways the courts police the process of invoking judicial activity. While such jurisdictional requirements should not apply unfairly or in a discriminatory manner, the absence of these requirements as a gatekeeping mechanism could have adverse affects on the ability of courts to function, and on opportunities for citizens to seek deserved judicial relief.

Prudential doctrines, such as the political question principle and the rules constraining unlimited use of class actions and overly-broad remedial decrees, serve similar functions. They channel judicial energies into areas properly reserved for courts, and out of areas that, in a democratic government, raise issues that should be resolved through the democratic political processes established by the Constitution.

The courts are not democratically elected, nor subject to the popular will, for good reason. That makes it particularly incumbent upon them to use their authority to override or constrain the will of the elected political branches of government very sparingly, lest the integrity of the political process be threatened. Beyond that, courts must be aware of their own limitations. Just as courts must be chary of undertakings that transgress on the proper sphere of the legislative branch, they must be equally skeptical of efforts to embroil them in ongoing management activities more appropriate to an executive or administrator.

At the same time, however, the courts play a central role in protecting and preserving individual rights against overreaching by majoritarian government, rights expressly protected by the Constitution or declared by the laws of the land. Insofar as such rights are threatened, and courts properly intervene on behalf of the citizen, a claim of judicial activism is misplaced. In protecting individual rights, and in preserving the essential construct of our democratic government, courts must be cautious and careful to find the proper balance between these competing claims.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			
Cash on hand and in banks	90	300	00
U.S. Government securities—add schedule	—		
Listed securities—add schedule	—		
Unlisted securities—add schedule	—		
Accounts and notes receivable			
Due from relatives and friends	—		
Due from others	19	000	00
Doubtful	—		
Real estate owned—add schedule (1)	540	000	00
Real estate mortgages receivable			
Autos and other personal property	134	000	00
Cash value—life insurance	*		
Other assets—itemize:			
IRA	10	200	00
pension plans - SJP	459	200	00
pension plans - IHN	190	500	00
house - contingent int.	10	000	00
Total assets	1,453	200	00

LIABILITIES			
Notes payable to banks—secured	55	000	00
Notes payable to banks—unsecured	—		
Notes payable to relatives	—		
Notes payable to others	—		
Accounts and bills due	2	000	00
Unpaid income tax	—		
Other unpaid tax and interest	—		
Real estate mortgages payable—add schedule (2)	313	000	00
Chattel mortgages and other liens payable	—		
Other debts—itemize:	—		
Total liabilities	370	000	00
Net worth	1,083	200	00
Total liabilities and net worth	1,453	200	00

CONTINGENT LIABILITIES			
As endorser, comaker or guarantor	—		
On leases or contracts	4	500	00
Legal Claims	—		
Provision for Federal Income Tax	—		
Other special debt	—		

GENERAL INFORMATION	
Are any assets pledged? (Add schedule.)	no
Are you defendant in any suits or legal actions?	no
Have you ever taken bankruptcy?	no

* face value $225,000; cash value unknown

Real Estate:

(1) Owned — Mkt value		(2) Mortgages payable
Bloomington house —	$225,000 ……	$143,000
Boone Creek house —	315,000 ……	170,000
	$540,000	$313,000

AFFIDAVIT

I, S. Jay Plager, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

September 25, 1989
(DATE)

S. Jay Plager
(NAME)

(NOTARY)
expires 5/14/93

AMERICAN BAR ASSOCIATION **Standing Committee on Federal Judiciary**
1800 M Street, NW
Washington, DC 20036
(202) 331-2270

CONFIDENTIAL

September 13, 1989

Hon. Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate
SD 224
Washington, D.C. 20510-0802

RE: S. (SHELDON) JAY PLAGER
United States Court of Appeals for the
Federal Circuit

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of S. Jay Plager for appointment as Judge of the United States Court of Appeals for the Federal Circuit.

A substantial majority of our Committee is of the opinion that Mr. Plager is Qualified for this appointment. A minority found him to be Well Qualified.

A copy of this letter has been sent to Mr. Plager for his information.

Sincerely,

Ralph I. Lancaster

Ralph I. Lancaster, Jr.
Chairperson

RIL/sm

cc All Committee Members
Mr. S. Jay Plager
Barbara Drake, Esq.

GEORGE W. LINDBERG

Birth:	June 21, 1932	Crystal Lake, Illinois
Legal Residence:	Illinois	
Marital Status:	Married	Linda M. Lindberg [illegible] children
Education:	1950 - 1954	Northwestern University B.S. degree
	1954 - 1957	Northwestern University School of Law J.D. degree
Bar:	1958	Illinois
Experience:	1955 - 1966	John E. Reid & Associates Vice President, General Counsel & Chief Polygraph Examiner
	1967 - 1973	Illinois General Assembly State Representative
	1966 - 1970	Franz, Franz, Wardell & Lindberg Member
	1970 - 1973	Sole practitioner
	1973 - 1977	State of Illinois State Comptroller
	1977 - 1978	State of Illinois Attorney General's Office Deputy Attorney General
	1978 - present	Justice of the Appellate Court of Illinois, Second Judicial District

Office:
7908 Northwest Highway
Crystal Lake, Illinois 60012
815 455-4282

Home:
420 Country Club Road
Crystal Lake, Illinois 60014

To be United States District Judge for the Northern District of Illinois

UNITED STATES SENATE

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

George W. (Wakem) Lindberg

2. Address: List current place of residence and office address(es).

420 Country Club Road, Crystal Lake, IL. 60014

7908 Northwest Highway, Crystal Lake, IL 60012

3. Date and place of birth.

June 21, 1932, Crystal Lake, McHenry County, IL 60014

4. Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

Married
Linda Merlo Lindberg nee Linda Sue Merlo
Executive Secretary to Burton Ericson, general counsel, Safety-Kleen, Corp., 777 Big Timber Road, Elgin, IL 60123

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

School of Law, Northwestern University, 357 E. Chicago Avenue, Chicago, IL 60611, Juris Doctor, June 1957

College of Liberal Arts, Northwestern University,
619 Clark Street, Evanston, IL
Bachelor of Science, June 1954.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

12/88 to present

Justice of the Appellate Court, Second Judicial District of Illinois, Elgin, IL 60120. Retained by a favorable vote of 78.5% for a second 10-year term.

12/78 to 12/88

Justice of the Appellate Court (as above). Elected to serve a 10-year term.

1/77 to 12/78

Deputy Attorney General of Illinois. Appointed; served 23 months.

1/73 to 1/77

Comptroller, State of Illinois. Elected to and served a four-year term.

1/67 to 1/73

State Representative, Illinois General Assembly. Elected to and served three successive two-year terms.

6/70 to 1/73

Attorney engaged in the sole general practice of law at One North Williams Street, Crystal Lake, IL 60014.

2/68 to 6/70

Attorney associated with the firm of Franz, Franz, Wardell & Lindberg. William M. Franz is the successor to the firm at 453 Coventry Green, Crystal Lake, IL 60014 (815) 459-8100.

6/55 to 2/68

John E. Reid & Associates, now of 250 S. Wacker Drive, Chicago, IL 60606, internationally recognized authorities on the application of the polygraph (lie-detector) technique and criminal interrogation. I served as vice president, chief examiner and legal counsel.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Illinois State Bar Association
Illinois Judges Association
Chicago Bar Association

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Illinois State Bar Association
Illinois Judges Association

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

United States Supreme Court, July 18, 1977
United States District Court, Northern District of Illinois, March 25, 1959
Illinois Supreme Court, November 20, 1958

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Except for published and nonpublished appellate opinions, I have not written or edited any books, articles or reports in recent years.

In 1965, I wrote and delivered a paper before the American Academy of Polygraph Examiners critical of the techniques used in the polygraph (lie-detector) examination of Jack Ruby by the Warren Commission. I have no copies of the paper and doubt if any exist anywhere as the organization disbanded a short time later.

I also assisted Professor Fred E. Inbau and John E. Reid in the research for several editions of their texts on "Truth and Deception: The Polygraph (Lie-Detector) Technique" and "Criminal Interrogation and Confessions" in the 1960's. Professor Inbau survives and is professor emeritus at Northwestern University, School of Law, 357 E. Chicago Avenue, Chicago, IL 60611.

I microphotographically illustrated Professor Ray L. Waterson's monograph on the "Effects of Nitrogen Mustard Gas on the Chick Embryo." The studies were designed to ascertain the bases of birth abnormalities. Northwestern University - 1954.

I wrote a column for "Viewpoint" in the Chicago Tribune, circa 1985, urging the continued election, instead of gubernatorial selection, of judges in Illinois. A similar article was published May 9, 1988, in the Chicago Daily Law Bulletin.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent.

Mayo Clinic, Rochester, Minnesota
May 6, 7 and 8, 1986

John C. Wall, M.D., 280 Virginia Street, Crystal Lake, IL 60014, May 1989. Dr. Wall has complete records of all my physical examinations including the ones performed at the Mayo Clinic.

14. Judicial Office (if applicable): State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

12/88 to present
Justice of the Appellate Court, Second Judicial District of Illinois, Elgin, IL 60120 (312) 695-3750. Retained by election for a second 10-year term with a favorable vote of 78.5% of those voting in the 13 northern Illinois counties which comprise the District. Appeals from both jury and nonjury and civil and criminal cases as a matter of constitutional right, excluding capital cases and judgments declaring statutes unconstitutional.

12/78 to 11/88
Justice of the Appellate Court, as aforesaid. Elected to a 10-year term in a contested partisan election after nomination in a contested primary election.

15. Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

> I have delivered the opinion of the court in about 1,000 of the 3,000 cases in which I have participated as one of the three justices on the panel.
>
> I offer these 10 as interesting appellate opinions which I authored and delivered on behalf of the court. I have also listed the names and telephone numbers of the opposing counsel, although I have not contacted them regarding this reference. Two of the cases Pease and Bank of Naperville were reproduced as lead cases in the prestigious series American Law Reports as the citations thereto indicate.

1. People v. Gates (1980), 82 Ill. App. 3d 749, 403 N. E.2d 77, aff'd (1981), 85 Ill. 2d 376, 423 N. E.2d 887, rev'd Illinois v. Gates (1983), 462 U.S. 213, 76 L. Ed. 2d 527, 103 S. Ct. 2317, reh'g denied (1983), 463 U.S. 1237, 77 L. Ed. 2d 1453, 14 S. Ct. 33, declined to follow State v. Jones (Alaska 1985), 706 P. 2d 317, also declined to follow Malcolm v. State (Md. 1988), 314 M. D. 221, 550 A.2d 670, also declined to follow State v. Ringquist (N.D., December 6, 1988), Nos. CR. 870361, 870362, N. W. 2d , also declined to follow State v. Swaim (Iowa 1987), 412 N. W. 2d 568; not followed on State law grounds People v. Griminger (N.Y. 1988), 71 N. Y. 2d 635, 529 N.Y.S.2d 55, 524 N.E.2d 409; disagreement recognized State v. Carroll (N.H. December 9, 1988), No. 87-152, A.2d .

I delivered the opinion for our court in Gates. My opinion was affirmed by the Illinois Supreme Court (Justice Moran, dissenting). The U.S. Supreme Court granted certiorari and modified the so-called Aguilar-Spinelli rule on anonymous sources. It appears from the extraordinary citational history that several states' highest courts have chosen to adhere to the Aguilar-Spinelli standard under their state constitutions.

Counsel:
Robert L. Thompson (312) 863-5569
James W. Reilley (312) 299-8870

2. In re Estate of Pirie (1986), 141 Ill. App. 3d 750, 492 N.E.2d 884, appeal withdrawn (1986). "Prudent man" and not "prudent investor" standard applied to institutional executors in Illinois. A very significant decision to the fiduciary bar.

Counsel:
Patrick W. O'Brien (312) 863-5569
Linda L. Listrom (312) 222-9350
William R. Dillon (312) 726-1704

3. *Rockford Life Insurance Co. v. The Department of Revenue* (1984), 128 Ill. App. 3d 302, 470 N.E.2d 596, *aff'd* (1986), 112 Ill. 2d 174, 492 N.E.2d 1278, *aff'd* (1987), 482 U.S. 182, 96 L. Ed. 2d 152, 107 S. Ct. 2312. U.S. - guaranteed securities are not exempt from Illinois taxation. A very significant decision for financial institutions in particular. A case of first impression in Illinois.

Counsel:
Russel D. Anderson (815) 987-8900
Daniel D. Doyle (815) 987-2526
Patricia Rosen (ret.) (312) 917-3698

4. *Pease v. Ace Hardware* (1986), 147 Ill. App. 3d 546, 498 N.E.2d 343, 61 A.L.R. 4th 1. Loss of consortium - inconsistent verdicts. See A.L.R. 4th Annot.

Counsel:
Thomas P. Stepanich (312) 244-2600
Ellis E. Fuqua (312) 244-0770
Linda E. Spring (312) 623-0700

5. *Board of Commissioners of Wood Dale Public Library District v. County of Du Page* (1983), 119 Ill. App. 3d 1085, 457 N.E.2d 1291; app. ct. *rev'd*, cir. ct. *aff'd*, (1984), 103 Ill. 2d 422, 469 N.E.2d 1370. The Illinois Constitution of 1970 abolished fee offices in Illinois. This court struck down a statute authorizing counties to retain the interest earned on funds it collected but had not yet disbursed. While the citational history suggests our holding was reversed, in point of fact, the Illinois Supreme Court agreed with our analysis but chose to apply it only prospectively since the counties had deprived the taxing made up districts of perhaps $200 million, and it would have to be by the taxpayers, a burden the court chose not to impose.

Counsel:
Barry Moss (312) 759-0800
J. R. Schirott (312) 773-8500

6. *Oak Brook Park District v. Oak Brook Development Co.* (1988), 170 Ill. App. 3d 221, 524 N.E.2d 213. The case involved $17 million condemnation award where a jury was required to determine whether the 34 acres was worth $1.7 million or $17 million.
Counsel:
Thomas T. Burke (312) 236-1386

Stephen D. Helm (312) 369-6616
7. People v. Boyce (1987), 156 Ill. 2d 1036, 509 N. E. 2d 776, appeal denied (1987), 116 Ill. 2d 563, 515 N.E.2d 114. Criminal liability of a corporation after dissolution.

Counsel:
D. Kendell Griffith (312) 630-4424
Mark L. Rotert (312) 353-5300

8. Button by Curio v. Elmhurst First National Bank (1988), 169 Ill. App. 3d 28, 522 N.E.2d 1368, appeal denied (1988), 122 Ill. 2d 570, 530 N.E.2d 240. Financial liability of defendant's estate for care of defendant found unfit for trial.

Counsel:
Roy I. Peregrine (312) 665-1900
Kathryn A. Spalding (312) 630-4400
Gerald J. Mannix (312) 755-9339
Ervin F. Wilson (312) 833-8400

9. Bank of Naperville v. Catalano (1980), 86 Ill. App. 3d 1005, 408 N.E.2d 441, 10 A.L.R. 4th 514. Liability of former bank customer to return an overage erroneously given him when his account was involuntarily closed by the bank. See ALR 4th report cited.

Counsel:
Robert W. Ward - Not listed
Jeffrey J. Knuckles (312) 369-2700

10. Ellerby v. Spiezer (1985), 138 Ill. App. 3d 77, 485 N.E.2d 413. Application of Uniform Partnership Act to the division of profits of a dissolved law firm - contingent fees.

Counsel:
Parties pro se

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

1. 1/67 to 1/73
   State Representative Illinois General assembly.
   Election - three successive two-year terms.

2. 1/73 to 1/77
   State Comptroller. Election - four-year term.

3. 11/76
   Unsuccessful candidate for reelection as State Comptroller.

4. **1/77 to 12/78**
   Deputy Attorney General of Illinois. Appointed - 23 months.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

2. whether you practiced alone, and if so, the addresses and dates;

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

b.

1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

c.

1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

2. What percentage of these appearances was in:
   (a) federal courts;
   (b) state courts of record;
   (c) other courts.

3. What percentage of your litigation was:
   (a) civil;
   (b) criminal.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

5. What percentage of these trial was:
   (a) jury;
   (b) non-jury.

6/57 to 2/68
After graduation from Northwestern and passing the Illinois bar exam, I remained with John E. Reid & Associates. The firm specializes in the application of the polygraph (lie-detector) technique and criminal and civil interrogation. I conducted about 5,000 investigations and lectured extensively on technique and the law involved in polygraph and interrogation at universities in the United States, Australia and South Africa. I also trained examiners from law enforcement agencies in the United States, Brazil and Israel. I assisted Professor Fred E. Inbau and John E. Reid in research for their texts, including the law relating to the polygraph and interrogation. I regularly lectured at Professor Inbau's Short Courses for prosecutors, defense counsel, newsmen and judges at Northwestern. I was an expert witness at several trials wherein I had conducted the polygraph test or critiqued the tests conducted by others.

1/67 to 1/73
While associated with John E. Reid & Associates and later as a lawyer in the general practice, I was elected to and served three successive two-year terms as State Representative in the Illinois General Assembly. The majority of the work in the General Assembly involved drafting, research, considering, debating, amending and voting upon changes in or additions to Illinois statutory law. Additionally, I successfully sponsored significant new statutes. Among them were the Illinois Governmental Ethics Act, Illinois Cannabis Control Act, Illinois Controlled Substances Act, the bill creating and separating the Department of Corrections from the State law enforcement function; Illinois Implied Consent Act and many others. Also, I chaired the Special House Committee appointed by the Illinois House Speaker to Investigate the Illinois Supreme Court which led to the resignations of two Illinois Supreme Court justices. I also served as Chairman of the House Judiciary Committee and drafted the first significant financial disclosure legislation ever enacted anywhere as required by the new Illinois Constitution of 1970.

2/68 to 6/70
While a member of the General Assembly, I also engaged in the general practice of law in Crystal Lake with the firm of Franz, Franz, Wardell and Lindberg. I emphasized an office practice, such as real estate transactions and business counseling, since a litigation practice was too difficult to manage as I was 200 miles away in the State Capitol most of the week.

6/70 to 1/73
Similarly, after the amicable dissolution of the Franz partnership, I continued the same style of practice and for the same reason, as a sole practitioner in Crystal Lake.

1/73 to 1/77
When I was elected State Comptroller I gave up all outside interests except apartment-building investments. As Comptroller, I was elected to the first new constitutional state office in Illinois in 100 years. The office was the successor to the Office of Auditor of Public Accounts under the 1970 Constitution. The principal task of the office was to institute the first uniform statewide accounting system so as to ascertain precisely the financial position of the State at any given moment. The Comptroller orders all funds into the State Treasury and, with the Treasurer, disburses all funds from the State Treasury. The implementation of the hundreds of thousands of subtasks to accomplish this feat required extensive legal research, decisions and litigation. I directed an internal staff of attorneys and consulted regularly with the Attorney General and attorneys from the IRS. The principal functions of the office, including the disbursement of three million income tax refunds, were fully implemented within 18 months of my taking office. The office drafted and mailed 50,000 checks per day for an average disbursement of $30 million per day.

1/77 to 12/78
As Deputy Attorney General, my primary litigation focus was appeals. I argued before the United States Supreme Court and the reviewing courts of Illinois. Also, in addition to the statewide administrative duties of the office, I supervised litigation involving revenue, charitable solicitation, antitrust, consumer fraud (i.e., Chevrolet engines in Oldsmobiles), criminal justice, general law and environmental protection. I appeared before the General Assembly on behalf of the Attorney General to support or oppose proposed changes in the law, and I supervised the issuance of Attorney General Opinions.

12/78 to present
As a Justice of the Appellate Court, my legal experience can be best described as total immersion. The cases I consider are civil, criminal and administrative in nature. The issues require the application of the common law and statutory and constitutional law principles, both state and federal.

I participate in the decision of approximately 300 appeals annually and deliver the court's opinion in 100 of them. I'm involved in the disposition of about 800 motions each year.

1985 and 86
I served a two-year term at the appointment of the Illinois Supreme Court on a newly-created special five-member panel of the appellate court to hear Illinois Industrial Commission appeals formerly considered exclusively by the Illinois Supreme Court.

1987 & 88
I was chosen by my brethren to be Presiding Justice for two one-year terms.

1987 to 88
I served on the "Committee of Fifty" appointed by the Illinois General Assembly to consider and recommend whether a new Illinois constitutional convention should be convened. The Illinois Constitution of 1970 requires the question to be placed before the voters every 20 years.

I have never clerked for a judge. Since graduation from law school, I have had the additional legal experiences derived from attending the law-related seminars and judicial meetings described below:

1. 1988 Council of Chief Judges Conference, ABA, appellate administration
2. 1988 Appellate Lawyer Association/John Marshall Law School, oral argument seminar
3. 1988 Appellate Lawyer Division/Lake County Bar Association, general appellate issues
4. 1987 Council of Chief Judges Conference, ABA, appellate administration
5. 1986 Appellate Judges Seminar, ABA, appellate issues
6. 1985 McHenry County Bar Association, appellate practice
7. 1983 Associate Judges Seminar, Supreme Court general judicial
8. 1983 Lake County Bar Association, appellate practice
9. 1982 Appellate Judges Seminar, ABA, appellate issues
10. 1981 Du Page County Bar Association Seminar, appellate practice
11. 1980 Appellate Judges Seminar, Harvard University, ABA, appellate issues
12. 1979-88 Annual Judicial Conferences, Illinois Supreme Court
13. 1979-88 Several Regional Judicial Conferences, Illinois Supreme Court
14. 1979 Loyola University Law School Fr. John Small's Ethics in Government Seminar
15. 1977 Meeting of the Attorneys General of the United States, St. Petersburg, Florida
16. 1977 Meeting of the Attorneys General of the United States, Administrative Offices, Indianapolis, Indiana
17. 1975 Annual Meeting of the Association of State Comptrollers and Treasurers, Ketchum, ID
18. 1974 Annual Meeting of the Association of State Comptrollers and Treasurers, White Sulphur Springs, W. Va.

19. 1968 Ninth Federal Circuit Judges Seminar, Reno, Nevada, panelist
20. 1968-73 ISBA and CBA practice seminars
21. 1968-73 The hearings of the Illinois House Judiciary Committee of which I was a member for six years and which I chaired for two years dealt in depth with the current legal issues of the time. I view them as intensive surrogate legal seminars.
22. 1960's I was a frequent lecturer at Northwestern Law School's short courses for prosecuting and defense attorneys, judges and newsmen and scientific evidence seminars.
23. Harvard Homicide Seminar - lectured
24. University of Oklahoma at Norman - lectured
25. University of Maryland - lectured
26. Marquette University - lectured

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

The following are cases which I personally handled either in drafting briefs, by arguing the case or directing the strategy on appeal.

1. *Quern v. Mandley, 436 U.S. 725, 98 S. Ct. 2068, 56 L. Ed. 2d (1978). As Illinois Deputy Attorney General, I argued before the Supreme Court of the United States on behalf of Arthur Quern, Director of the Illinois Department of Public Aid. This was a class action brought to declare the Illinois emergency assistance program violative of federal law. My client, Quern, prevailed in an unanimous decision.

2. *Talsky v. Department of Registration & Education, 68 Ill. 2d 579, 370 N.e.2d 173, cert. denied 439 U.S. 820, 99 S. Ct. 84, 58 L. Ed. 2d 111 (1977). I argued this case before the Illinois Supreme Court as Illinois Deputy Attorney General. I obtained a reversal of the circuit court's restoration of petitioner's chiropractic license

which had been suspended for advertising in violation of the Medical Practice Act. (N.B. Assistant Attorney General Charles J. Pesek was reflected on the brief as Of Counsel. I delivered the argument before the court.)

3. Irving Pharmacy v. Department of Registration & Education, 75 Ill. App. 3d 652, 394 N.E.2d (1979). While I did not argue this case, as Deputy Attorney General I assisted in the drafting of the brief defending the State's revocation of a pharmacy license for dispensing without prescriptions. My client, the Department, prevailed.

4. Kerner v. State Employment Retirement System, 53 Ill. App. 3d 747, 368 N.E.2d 1118 (1977). As Comptroller, I was trustee of the State Employment Retirement System *ex officio* and, as such, planned the System's legal defense to an action to obtain death benefits for the survivors of a deceased governor who had been convicted in U.S. District Court of a felony for acts committed while he was governor. The State Employment Retirement System prevailed.

5. *Hardaway v. Civil Service Commission, 52 Ill. App. 3d 494, 367 N.E.2d 778 (1977). I argued for the State as Illinois Deputy Attorney General in this wrongful discharge case before the Illinois Appellate Court, Fourth Judicial District. My client, the Commission, prevailed.

6. Cronin v. Lindberg, 66 Ill. 2d 47, 360 N.E.2d 360 (1976). As Comptroller, I was the defendant in my official capacity in this action by the State Secretary of Education to force disbursement of funds which were not authorized by statute or the constitution. I actively led the development of the offices defense strategy. As Comptroller, I prevailed.

7. People ex rel. Kirk v. Lindberg, 59 Ill. 2d 38, 320 N.E.2d 17 (1974). As Comptroller, I challenged the expenditure of federal funds by the governor which had not been appropriated by the legislature, as was required by the then, new Illinois Constitution of 1970. As Comptroller, I prevailed.

8. Cusack v. Howlett, 44 Ill. 2d 233, 254 N.E.2d 506 (1969). I was the chairman of a special committee of the Illinois House of Representatives established to investigate allegations of impropriety by one or more justices of the Illinois Supreme Court. The committee's authority to spend public funds was challenged by a taxpayers action. I led the development of the committee's legal defense. The Illinois Supreme Court held that the legislative expenditure of funds to investigate the judiciary was a violation of the separation of powers provision of the 1870 Illinois Constitution. I testified within the next

60 days before a unique joint session of four Committees of the 1970 Illinois Constitutional Convention. The legislature now has constitutional authority to investigate any branch of Illinois government before voting a bill of impeachment (see also answer to question No. 19 for more detail).

9. and 10.

Re: Illinois Crime (AKA Legislative) Investigating Commission: As a legislative commissioner of the Illinois Crime (AKA Legislative) Investigating Commission, I participated in strategy formulation for numerous and very interesting legal actions to grant immunity to and compel testimony from persons alleged to be associated in organized crime engaged in but not limited to usurious lending (juice racket), gambling paraphernalia, official corruption, juke box monopoly etc. See, e.g., Illinois Crime Investigating Commission v. Sarno, 45 Ill. 2d 473, 259 N.E.2d 267 (1970), cert. granted, 401 U.S. 935, 28 L. Ed. 2d 214, 91 S. Ct. 918 (1971), writ dismissed 406 U.S. 482, 32 L. Ed. 2d, 92 S. Ct. 1677 (1972); Illinois Crime Investigating Commission v. Tolomeo, 47 Ill. 2d 393, 266 N.E.2d 322 (1971).

*** Personally argued**

Paul J. Bargiel, Esq. was chief of the Attorney General's Civil Appeals Division and would have been co-counsel on many, if not all, of the cases. He practices at: Room 1424, 39 S. La Salle Street, Chicago, Illinois 60603. (312)-263-0888

19. Legal activities: Describe the most significant level [sic legal] activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

The most significant legal activity in which I have participated is sitting for 10.5 years as a judge of the intermediate court of appeals where 96% of all Illinois appeals are concluded. However, since that experience is adequately described in the answers to the foregoing questions, I will describe another significant legal experience.

On June 13, 1969, while I was a member of the legislature, a citizen appeared at the Executive Committee asking that certain named state officers, including two Illinois Supreme Court justices, be impeached for conflicts of interest. Contrary to previous experience with these

requests, this citizen had dates, times, places and amounts. I was appointed by the Speaker to chair the Special House Committee to Investigate the Courts to conduct hearings as to those allegations relating to members of the judicial branch.

In a series of hearings, we learned that a former director of revenue had formed a bank and offered to give or sell shares of the bank's stock to numerous public officials and representatives of the Illinois media. We also learned that the Illinois Supreme Court had struck down 32 of the 33 counts of the indictment of which the former director stood convicted for owning the company which sold all the envelopes used by the State while he was director of revenue.

While these disclosures were a considerable embarrassment to Illinois government and the Illinois media, the objective of my committee was to determine whether the two justices should be impeached. After two weeks of hearings, the committee recessed June 30 at the end of the legislative session.

In the meantime the Illinois Supreme Court appointed its own committee which held hearings July 15, 1969. The two justices resigned August 3, 1969, after it was disclosed that they had participated in the decision of the former director's appeal and that one had purchased stock for $16,000 and the other had accepted and transferred to his grandchildren a $2,000 campaign contribution from the former director for an uncontested campaign. In spite of the resignations, our committee sought to continue its investigation and hearings as to other judges who were accused of improprieties such as self dealing and conflicts of interest. Four Chicago lawyers obtained an injunction against our further expenditure of state funds on the grounds of a violation of the separation of powers provision of the Illinois Constitution of 1870. The Illinois Supreme Court affirmed the issuance of the injunction.

While my committee was prohibited from spending State funds, we nonetheless, proceeded ad hoc by introducing a resolution that created the Ethics in Government Commission to consider and draft proposals to require economic disclosure by Illinois public officials, particularly judges, who until that time were only required to make secret disclosures which were maintained in a locked safe by the supreme court.

Thereafter, I appeared before a unique session of four standing committees of the newly-convened Illinois Constitutional Convention. Because of my testimony and that of others, at least three new provisions appear in the Constitution of 1970: public economic disclosure is required of all state officials, including judges; the General Assembly may investigate any branch of government before voting a bill of impeachment; and judicial inquiry shall be performed by a judicial inquiry board, consisting of lawyers and nonlawyers, and a courts' commission.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. Describe all financial arrangements, stock options, deferred compensation agreements, future benefits, and other continuing relationships with business associates, clients or customers.

None.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial years as a judge.

I will avoid potential conflicts by: (1) instituting an automatic recusal system with the Clerk's Office, if feasible, or within my chambers, that will alert me to (a) the existence of parties in litigation assigned to me with whom I have a financial or personal interest, or (b) representation by attorneys with whom I have a family or friend relationship.

The standard I have applied and will continue to apply is whether I have any interest in, or the appearance of an interest in the outcome of any litigation that could, or could appear to impair my ability to decide all questions in the case with absolute disinterest in the eventual judgment. The highest calling of a professional jurist is absolute impartiality. I will comply with the American Bar Association's Model Code of Judicial Conduct as a minimum standard.

In further answer to the question, the most obvious targets for my automatic recusal is litigation involving Safety-Kleen Corp. and Chapman Energy, Inc. because of my spouses employment by Safety-Kleen and our stock ownership in both Safety-Kleen and Chapman. I will also automatically recuse myself from any matter where any of the State of Illinois retirement systems is a party because I will be a recipient of annuities from one or more of those systems.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of

the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No, except as the candidate in my own campaigns.

5. If applicable, please describe the arrangements you made to dissolve your financial interest in your law firm. What time period is involved? What arrangements have you made to be compensated for your work on pending litigation?

Not applicable, I've been a judge for the last 10.5 years and terminated my sole practice of law more than 15 years ago when I became State Comptroller.

6. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

Rev. 7/19/89

CONFIDENTIAL FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			
Cash on hand and in banks	5900		
U.S. Government securities—add schedule			
Listed securities—add schedule	8400		
Unlisted securities—add schedule	500		
Accounts and notes receivable:			
Due from relatives and friends			
Due from others			
Doubtful			
Real estate owned—add schedule	179000		
Real estate mortgages receivable			
Autos and other personal property	35500		
Cash value—life insurance	2700		
Other assets—itemize:			
State of Ill. pension cash value	92000		
IRA accts.	16900		
Total assets	340900		

LIABILITIES			
Notes payable to banks—secured			
Notes payable to banks—unsecured			
Notes payable to relatives			
Notes payable to others			
Accounts and bills due	2500		
Unpaid income tax			
Other unpaid tax and interest			
Real estate mortgages payable—add schedule	52000		
Chattel mortgages and other liens payable	11400		
Other debts—itemize:			
Total liabilities	65900		
Net worth	275000		
Total liabilities and net worth	340900		

CONTINGENT LIABILITIES	None		
As endorser, comaker or guarantor			
On leases or contracts			
Legal Claims			
Provision for Federal Income Tax			
Other special debt			

GENERAL INFORMATION			
Are any assets pledged? (Add schedule.)	no		
Are you defendant in any suits or legal actions?	no		
Have you ever taken bankruptcy?	no		

SCHEDULE I

ASSETS:	
Cash on hand in banks	
Home State Bank 40 Grant Street Crystal Lake, IL 60014 Checking Account	$ 1,400
Safety-Kleen Corp. 777 Big Timber Road Elgin, IL 60123 Credit Union	4,500
Listed securities	
Safety-Kleen Corp. (SK) Common stock	8,400
Unlisted securities	
Chapman Energy Co., Inc. Common stock	500
Real estate owned	
420 Country Club Road Crystal Lake, IL 60014	179,000
Autos and other personal property	
1986 Toyota sedan	10,000
1986 Pontiac Station Wagon	8,000
1982 Volkswagen Rabbit	2,500
Residential personalty	15,000
Cash value - life insurance	
Northwestern Mutual Ins. Co.	2,700
Other assets:	
Present cash value of pensions:	
State of Illinois	92,000
Safety Kleen Corp. *	Nil

* We are unable to ascertain the actuarial present value of my spouse's pension, but in 19 years, age 65, she will receive a pension of $154/month.

Charles Schwab & Co. as trustee of IRA accounts for	
George W. Lindberg	8,350
Linda M. Lindberg	8,550
	$ 340,900
Total Assets (rounded):	**$ 340,900**

SCHEDULE II - LIABILITIES

Accounts and bills due	
Misc. credit card accounts, utilities, etc.	$ 2,500
Real estate mortgages payable	
Citicorp of Crystal Lake	
First mortgage on personal residence	25,000
Second mortgage on personal residence	27,000
Chattel mortgages	
Home State Bank of Crystal Lake	
1986 Toyota Cressida	6,300
1986 Pontiac Wagon	5,100
Total Liabilities:	**$ 65,900**

III. GENERAL (PUBLIC)

1. An ethical consideration under Cannon 2 of the American Bar Association's Code of Professional Responsibility calls for "[e]very lawyer, regardless of professional prominence or professional workload, to find some [sic should find] time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As a law student at Northwestern, I assisted in the work of the legal clinic for the disadvantaged.

As a sole practitioner I performed $4,000 worth of legal services for $400 for a disadvantaged Hispanic widow whose installment purchase contract for her home was being construed by the seller as a rental agreement. I had to remove over 35 objections on the title report which was accomplished with the thoughtful assistance of several state and federal judges and financial institutions. I obtained a mortgage for her, allowing her to pay off the troublesome seller.

As State Representative, I spent a great deal of time helping disadvantaged people with health, financial, employment and educational problems.

I assisted a gentleman obtain alcoholism treatment twice. I subsequently obtained employment for him, and he became a sober, contributing member of society.

As Comptroller, I made a special effort to employ the disadvantaged (physically, mentally and educationally) in the Record Control Division. This facility was entirely on the ground floor for easy access and was located in the heart of the Capitol serviced by all public transportation. These disadvantaged people were among my most dedicated and productive employees. Also, as Comptroller, I frequently personally intervened in the bureaucracy to expedite the reissue of retirement, salary, disability and public aid warrants (checks) which had been stolen or lost.

As a result of a letter from a 10-year-old addressed only "Mr. Welfareman, Springfield, IL." and delivered to me as Comptroller, I led a collection drive to furnish the clothing sought by the little girl as Christmas gifts to her mother and brother but not for herself. The mother was shocked to learn what her daughter had done, but gratefully accepted the employees' contributions. In thanking my employees and me in a letter, she accounted for every penny spent, including that which was spent for food for neighbors in need.

As Illinois Deputy Attorney General, there were many occasions where I had the opportunity to assist the disadvantaged, particularly in the area of consumer fraud.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

No. Not belonging to any of the described organizations, I have had no opportunity to effectuate a change in their policies.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

No. There is no selection commission in the Northern District of Illinois to recommend candidates for nomination to the federal bench. My experience in the judicial selection process for the instant vacancy began upon my learning in January 1989 that a district judge vacancy existed in the Northern District of Illinois by reason of a judge taking senior status. I asked Minority Leader Robert Michel to consider me for his recommendation to the President for nomination as a judge of the U.S. District Court.

As part of Minority Leader Michel's screening procedure, I met with the Illinois Republican House delegation and was interviewed by several bar associations. I was one of three persons recommended by Minority Leader Michel to the President.

I was interviewed by staff of the Department of Justice and by agents of the Federal Bureau of Investigation. I was also interviewed by a representative of the Standing Committee on the Federal Judiciary of the American Bar Association.

On September 20, 1989, the President nominated me to the U.S. District Court for the Northern District of Illinois.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue or question? If so, please explain fully.

None whatsoever.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I believe a district judge should render judgments that are narrow in their scope, restricted to the particular issues that are properly before the court and avoid usurping the legitimate prerogatives of the executive and legislative branches of government.

I have served in all three branches of Illinois government. I have great respect for the responsibilities of and the limitations upon the exercise of power by each of the three branches. I am not unaware of the criticism at the state and federal levels that the legislative branch moves too slowly or that the executive and judicial branches occasionally try to usurp legislative prerogative. But, it is precisely by reason of the distinct character of each of the branches

and their unique roles in a tripartite system of government that requires each branch to respect and to decline to exercise the powers ascribed to the other two branches.

Our Illinois Supreme Court observed "[w]hether the enactment is wise or unwise, whether it is based on sound economic theory; whether it is the best means to achieve the desired results, and whether the legislative discretion within its prescribed limits should be exercised in a particular manner are matters for the judgment of the legislature, and the honest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance." (Thillens, Inc. v. Morey, 11 Ill. 2d 579, 593, 144 N.E.2d 736, 743 (1957), appeal dismissed, 355 U.S. 606, 2 L. Ed. 2d 524, 78 S. Ct. 538 (1957).) I subscribe to these observations, and I am convinced that government serves best when the role of each branch is scrupulously observed.

AMERICAN BAR ASSOCIATION
Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

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ABA/NET ABA 363

CONFIDENTIAL

September 29, 1989

Hon. Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate
SD 224
Washington, D.C. 20510-0802

RE: HON. GEORGE W. LINDBERG
United States District Court for
the Northern District of Illinois

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Judge George W. Lindberg for appointment as Judge of the United States District Court for the Northern District of Illinois.

A substantial majority of our Committee is of the opinion that Judge Lindberg is Qualified for this appointment. A minority found him to be Not Qualified.

A copy of this letter has been sent to Judge Lindberg for his information.

Sincerely,

Ralph Lancaster

Ralph I. Lancaster, Jr.
Chairperson

RIL/sm

cc All Committee Members
Hon. George W. Lindberg
Barbara Drake, Esq.

DONALD B. AYER

Birth:	April 30, 1949	San Mateo, California
Legal Residence:	Virginia	
Marital Status:	Married	Anne Norton Ayer two children
Education:	1967 - 1971	Stanford University B.A. degree
	1971 - 1972 1973 - 1975	Harvard Law School J.D. degree
	1972 - 1973	Harvard University Graduate School of Arts and Sciences, M.A. degree
Bar:	1975 1978	California District of Columbia
Experience:	1975 - 1976	Law Clerk to Hon. Malcolm Wilkey U.S. Court of Appeals for the District of Columbia
	1976 - 1977	Law Clerk to Hon. Wm. Rehnquist Supreme Court of the United States
	1977 - 1979	Assistant U. S. Attorney Northern District of California
	1979 - 1981	Gibson, Dunn & Crutcher Associate
	1981 - 1986	United States Attorney Eastern District of California
	1986 - 1988	Principal Deputy Solicitor General Ofc of the Solicitor General U.S. Department of Justice
	1988 - present	Jones, Day, Reavis & Pogue Partner
Office:	1450 G Street, N.W. Washington, D.C. 20005 202 879-4689	
Home:	1328 Portia Place McLean, Virginia 22102	

To be Deputy Attorney General

DONALD B. AYER

I. Biographical Information (Public)

1. Full name (include any former names used.)

Donald Belton Ayer

2. Address: List current place of residence and office address(es).

Office: 1450 "G" Street, N.W.
Washington, D. C. 20005-2088

Home: 1328 Portia Place
McLean, Virginia 22102

3. Date and place of birth.

April 30, 1949
San Mateo, California

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married
Anne Norton (Ayer)
Homemaker

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Stanford University, 1967-1971
B.A. 1971

Harvard University, 1972-1973
M.A. 1973

Harvard Law School, 1971-1972; 1973-1975
J.D. 1975

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Summer 1973
Law clerk - Arent, Fox, Kintner, Plotkin & Kahn
Washington, D.C.

Summer 1984
Law clerk - Heller, Ehrman, White & McAuliffe
San Francisco, California

1975-1976
Law clerk to the Honorable Malcolm R. Wilkey
U.S. Court of Appeals
District of Columbia Circuit
Washington, D.C.

1976-1977
Law clerk to the Honorable William H. Rehnquist
Supreme Court of the United States
Washington, D. C.

1977-1979
Assistant United States Attorney
Northern District of California
San Francisco & San Jose, California

1979-1981
Associate
Gibson, Dunn & Crutcher
San Jose, California

1981-1986
United States Attorney
Eastern District of California
Sacramento, California

1986-1988
Deputy Solicitor General and Counselor to the Solicitor General
U.S. Department of Justice
Washington, D.C.

1988-present
Partner
Jones, Day, Reavis & Pogue
Washington, D.C.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Phi Beta Kappa

James Birdsall Weter Prize for outstanding honors thesis in history (1971)

Harvard Law Review Articles Editor (1973-1975)

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Board of Directors, 1989-present
National Association of Former United States Attorneys

Member, American Bar Association
Litigation Section,
Appellate Practice Committee

Member, 1985-1986
Attorney General's Advisory Committee of U.S. Attorneys

Member, 1983-1985
Executive Committee of the Ninth Circuit Judicial Conference

Member, 1983-1986
Federal Court's Committee of the California State Bar

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Lobbying organizations

National Trust for Historic Preservation (member)

Trout Unlimited (member)

WETA (member)

Others

Supreme Court Historical Society (member)

Sigma Alpha Epsilon (social fraternity) (member)

Lincoln's Inn Society (member/Board of Governors) 1971-1975

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

State Bar of California, 1975-present

Bar of the District of Columbia, 1978-present

Supreme Court of the United States
1986-present

Courts of Appeals
  District of Columbia Circuit, 1976-present
  Ninth Circuit, 1976-present
  Fourth Circuit, 1976-present

United States District Courts
  Eastern District of California, 1982-present
  Northern District of California, 1977-present

United States Claims Court, 1985-present

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

The Defense Defense, The Brief (published by ABA Section on Tort and Insurance Practice), Vol. 18, No. 2, Winter 1989 at 17

Judge Malcolm Wilkey's Contributions to Criminal Law, 1985 B.Y.U. L. Rev. 635 (1985)

The Fifth Amendment and the Inference of Guilt from Silence: Griffin v. California After Fifteen Years, 78 Mich. L. Rev. 1435 (1980)

Note, 87 Harv. L. Rev. 1435 (1975)

Case Comment, 87 Harv. L. Rev. 841 (1974)

Case Comment, 87 Harv. L. Rev. 181 (1974)

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent
October 1988

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

1977-1979, Appointed
Assistant United States Attorney
Northern District of California

1981-1986, Appointed
United States Attorney
Eastern District of California

1986-1988, Appointed
Deputy Solicitor General and Counselor to the
Solicitor General
U.S. Department of Justice

15. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

1975-1976
Law clerk to the Honorable Malcolm R. Wilkey
U.S. Court of Appeals
District of Columbia Circuit
Washington, D.C.

1976-1977
Law clerk to the Honorable William H.
Rehnquist
Supreme Court of the United States
Washington, D. C.

2. whether you practiced alone, and if so, the addresses and dates;

No

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

Summer 1973
Arent, Fox, Kintner, Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C.
Law Clerk

Summer 1974
Heller, Ehrman, White & McAuliffe
333 Bush Street
San Francisco, California
Law Clerk

1975-1976
U.S. Court of Appeals
for the District of Columbia Circuit
3rd & Constitution Avenues, N.W.
Washington, D.C.
Law Clerk to the Hon. Malcolm R. Wilkey

1976-1977
Supreme Court of the United States
Washington, D.C.
Law Clerk to the Hon. William H. Rehnquist

1977-1979
Office of the U.S. Attorney
Northern District of California
450 Golden Gate Avenue
P.O. Box 36060
San Francisco, California

AND

U.S. Courthouse
280 South First Street, Room 4050
San Jose, California
Assistant U.S. Attorney

1979-1981
Gibson, Dunn & Crutcher
One Almaden Boulevard, Suite 1000
San Jose, California
Associate

1981-1986
Office of the U.S. Attorney
3305 Federal Building
650 Capitol Mall
Sacramento, California
United States Attorney

1986-1988
Office of the Solicitor General
U.S. Department of Justice
10th & Constitution Avenues, N.W.
Washington, D.C.
Deputy Solicitor General and
Counselor to the Solicitor General

1988-present
Jones, Day, Reavis & Pogue
1450 "G" Street, N.W.
Washington, D.C.
Partner

b. 1. What has been the general character of your law practice, dividing it into period with dates if its character has changed over the years?

1977-1979
Criminal Prosecution
Assistant U.S. Attorney
San Francisco and San Jose, California

1979-1981
Civil business and employment discrimination litigation
Gibson, Dunn & Crutcher
San Jose, California

1981-1986
U.S. Attorney, Eastern District of California
Civil and criminal litigation, office administration
Sacramento, California

1986-1988
Deputy Solicitor General and
Counselor to the Solicitor General
Litigation of constitutional and statutory issues before the U.S. Supreme Court

1988-present
Partner
Jones, Day, Reavis & Pogue
Washington, D.C.
Appellate and trial court civil and criminal litigation

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

I have represented the United States as a criminal prosecutor, and in a wide range of civil trial and appellate practice. As a private practitioner for a total of three years, I have represented primarily corporate clients in civil litigation. The subject areas of my practice have included criminal law, constitutional law, labor and employment law, tort law, liability of governmental bodies, and general business litigation.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

1977-1979
Appeared in court very frequently -- several times each week.

1979-1981
Appeared in court rarely.

1981-1986
Appeared in court regularly, but less often than during 1977-1979.

1986-1988
Argued in U.S. Supreme Court eleven times.

1988-present
Appear in court rarely.

2. What percentage of these appearances was in:
(a) federal courts;
(b) state courts of record;
(c) other courts.

Nearly all appearances have been in federal courts.

3. What percentage of your litigation was:
   (a) civil;
   (b) criminal.

1977-1979: 100% criminal
1979-1981: 100% civil
1981-1986: 50-50 civil/criminal
1986-1988: 90%+ civil

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

AND

5. What percentage of these trials was:
   (a) jury;
   (b) non-jury.

1977-1979 -- approximately 11 federal district court jury trials, one federal district court non-jury trial, sole counsel on all. Also, numerous non-jury criminal misdemeanor magistrate court trials.

1981-1986 -- five federal district court jury trials, one federal district court non-jury trial, sole counsel on five, chief counsel on one.

In addition to trials, I have argued many times in the federal appellate courts and eleven times in the U.S. Supreme Court.

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;

(b) the name of the court and the name of the judge or judges before whom the case was litigated; and

(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

A. SUPREME COURT LITIGATION:

1. Boyle v. United Technologies, 108 S. Ct. 2510 (1988)

I participated in drafting the amicus brief and argued the case on behalf of the United States, on October 13, 1987 and April 27, 1988. The issue in the case was whether and under what circumstances a federal contractor who builds a piece of military equipment in accord with specifications approved by the United States is entitled to a defense against civil negligence or product liability actions by third parties. The Supreme Court decided the case in substantial accord with the brief of the United States arguing in favor of such a defense.

Co-counsel:

Charles Fried
Harvard Law School (LW228)
Cambridge, Massachusetts 02138
(617) 495-4636

Christopher J. Wright
Office of the Solicitor General
10th & Constitution Avenues, N.W.
Washington, D. C. 20530
(202) 633-5615

For Petitioner:

Louis S. Franecke
Mack, Mazlewood, Franecke & Tinney
221 Pine Street, Suite 600
San Francisco, California 94104
(415) 391-1560

For Respondent:

Philip A. Lacovara
General Electric Co.
3135 Easton Turnpike
Fairfield, Connecticut 06431
(203) 373-3632

2. McNally v. United States, 107 S. Ct. 2875 (1987)

I participated in drafting the brief and argued on behalf of respondent United States on April 27, 1987. The issue as viewed by the Court was whether the criminal mail fraud statute, 18 U.S.C. § 1341, makes it a crime to utilize the mails as part of a scheme to defraud someone of intangible interests such as the public's interest in honest government, or whether only schemes relating to money or other tangible property can be punished. The United States argued that the statute did in fact reach schemes relating to such intangible interests, and thus could on that theory be used to prosecute public corruption schemes where the mails are utilized. The Court ruled to the contrary by a vote of 7-2. Congress has subsequently enacted legislation restoring the mail fraud statute to the construction urged by the United States in this case.

Co-counsel:	Charles Fried Harvard Law School (LW228) Cambridge, Massachusetts 02138 (617) 495-4636
	Christopher J. Wright Office of the Solicitor General 10th & Constitution Avenues, N.W. Washington, D.C. 20530 (202) 633-5615
For Petitioner:	Carter Phillips Sidley & Austin 1722 "I" Street, N.W. Washington, D.C. (202) 429-4000

3. United States v. Johnson, 481 U.S. 681 (1987)

I participated in drafting the petition for certiorari and briefs on behalf of petitioner United States, and argued the case on February 24, 1987. The Court, in accordance with the position of the United States, reaffirmed the *Feres* doctrine and applied it to this case, where a Coast Guard helicopter pilot was killed, allegedly through the negligence of an FAA traffic controller. The *Feres* doctrine construes the Federal Tort Claims Act to bar actions against the United States for injuries resulting to military personnel in the course of their military service.

Co-counsel:	Charles Fried Harvard Law School (LW228) Cambridge, Massachusetts 02138 (617) 495-4636
	Christopher J. Wright Office of the Solicitor General 10th & Constitution Avenues, N.W. Washington, D.C. 20530 (202) 633-5615

For Respondents:

Joel Eaton
Podhurst, Orseck, Josefsberg, Eaton, Meadow & Olin
25 West Flagler Street, Suite 800
Miami, Florida 33130
(305) 358-2800

- 4. Meese v. Keene, 481 U.S. 465 (1987)

I participated in drafting the brief and argued the case on behalf of petitioner United States on December 2, 1986. The Court, while rejecting the position of the United States on the issue of standing, upheld our position on the merits. It ruled, more specifically, that the First Amendment rights of an exhibitor of a foreign film are not infringed by the fact that the film is classified by the U.S. government as "political propaganda" as that term is defined in the Foreign Agent Registration Act.

Co-counsel:

Charles Fried
Harvard Law School (LW228)
Cambridge, Massachusetts 02138
(617) 495-4636

Paul J. Larkin, Jr.
Office of the Solicitor General
10th & Constitution Avenues, N.W.
Washington, D.C. 20530
(202) 633-5619

For Respondent:

John G. Donhoff, Jr.
60 East Sir Francis Drake Boulevard, Suite 207
Larkspur, California 94939
(415) 461-2595

5. Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546 (1986)

I argued this case on behalf of amicus United States when the Court heard oral argument for the second time, on October 15, 1986. In general agreement with the position of the United States, the Court reversed the application of a contingency multiplier in calculating an award of attorney fees. Such a multiplier had been allowed by the trial judge in order to compensate the lawyer for bearing the risk that the lawsuit might not prevail and thus the attorney might go uncompensated.

Co-counsel:

Charles Fried
Harvard Law School (LW228)
Cambridge, Massachusetts 02138
(617) 495-4636

For Petitioner:

Jay C. Waldman
U.S. District Court
Eastern District of Pennsylvania
601 Market Street
Philadelphia, Pennsylvania 19106
(215) 597-7704

For Respondent:

James D. Crawford
Schnader, Harrison, Segal & Lewis
1600 Market Street, Suite 3600
Philadelphia, Pennsylvania 19103
(215) 751-2162

B. CASES IN THE FEDERAL DISTRICT AND APPELLATE COURTS

6. United States v. Gatto, Bonnano, et al., 763 F.2d 1040 (9th Cir. 1985)

In this fraud prosecution, I participated in drafting the government briefs filed in the Ninth Circuit Court of Appeals and argued in that court (on December 11, 1984) on behalf of the United States for reversal of the district court order. That order suppressed evidence on the ground that the government delayed unnecessarily in disclosing it to the defendants, and dismissed the case with prejudice when the government's refusal to go forward with trial prior to appeal of the exclusionary order. The court of appeals reversed on both issues.

Co-counsel:

Hon. Fred K. Morrison
Superior Court
County of Sacramento
720 - 9th Street
Sacramento, California 95814
(916) 440-5522

Nancy L. Simpson
Assistant U.S. Attorney
Eastern District of California
3305 Federal Building
650 Capitol Mall
Sacramento, California 95814
(916) 551-2700

Def. Counsel: D. Gilbert Athay
Athay & Associates
72 East 400 S
Salt Lake City, Utah
(801) 363-7074

Charles R. Garry
1256 Market Street
San Francisco, California
(415) 864-3131

Dennis P. Riordan
523 Octavia
San Francisco, California
(415) 431-3742

Judges: Circuit Judges Wallace, Hug, Schroeder

7. United States v. Wright, Puccinelli, Stearns, 742 F.2d 1215 (9th Cir. 1984)

In the spring of 1983, I was primarily responsible for prosecuting before a jury this case involving a marijuana plantation partially on U.S. Forest Service land in the Sierra Nevada mountains where more than 4,500 marijuana plants were found. All three defendants were convicted of the primary charges against them. The guilty verdict against one defendant on one count was set aside by the district court. On appeal, which I also handled personally, all convictions were affirmed, and the district court order setting the conviction aside on one count was reversed.

Co-Counsel/trial: David F. Levi
3305 Federal Building
650 Capitol Mall
Sacramento, California 95814
(916) 551-2700

Co-counsel/app.: None

Def. counsel/trial: Stephen Heiser
Ian G. Loveseth
819 Eddy St.
San Francisco, California
(415) 771-6174

Def. counsel/app.: Sandra Gillies
Office of the Federal Defender
1125 Firehouse Allee
Sacramento, California
(916) 440-2528

Doris Shockley
834 Jefferson Boulevard
West Sacramento, California
(916) 372-0632

Steven D. Bauer
2515 Gary Court
West Sacramento, California
(916) 372-7741

District Judge: Hon. Raul A. Ramirez, E.D. Cal.

Judges, Ct of App: Circuit Judges Hug, Ferguson, Waters

8. United States v. Veon, (C.A. No. 83-1045, unpublished memorandum issued September 26, 1983)

In this major cocaine distribution conspiracy case, I drafted the United States' appeal brief and, on August 9, 1983, argued before the Ninth Circuit Court of Appeals for reversal of the order of the district court suppressing the bulk of the government's evidence as the fruit of an unlawful search. The court of appeals unanimously reversed, holding that the search warrant affidavit provided probable cause for the search. Veon ultimately entered a guilty plea.

Co-counsel: None.

Def. counsel: Barry Tarlow
9119 Sunset Boulevard
Los Angeles, California
(213) 278-2111

Judges: Circuit Judges Wallace, Pregerson, Norris.

9. United States v. Passaro, 624 F.2d 938 (9th Cir. 1980)

In March 1979, I personally handled the prosecution of Alan David Passaro, as the primary operator of an elaborate methamphetamine laboratory in Ben Lomand, California. I also drafted the government's brief on appeal, and the conviction was ultimately upheld by the Ninth Circuit. (I did not argue the appeal because I had left the office by the time it was argued.)

Co-counsel: None

Def. counsel: Victor Vertner
Elrose Avenue
San Jose, California
(408) 266-4198

District Judge: Hon. William A. Ingram, N.D. Cal. (now Chief Judge)

Judges, Ct of App: Circuit Judges Choy, Wallace; Senior District Judge Robert A. Grant (N.D. Indiana)

10. United States v. Hurd, (C.A. No. 73-3131, unpublished memorandum issued July 3, 1979)

In June 1978, I personally prosecuted Dr. Chester Hurd on multiple counts of illegal distribution of controlled substances, arising from his distribution of large quantities of Ritalin, by way of prescriptions issued through his medical office in East Palo Alto, California. Hurd's conviction was affirmed on appeal, which I also handled.

Co-counsel: None

Def. counsel: Terry A. Green
425 East Santa Clara Street
San Jose, California
(408) 998-2857

District Judge: Hon. Spencer Williams, N.D. Cal.

Judges, Ct of App.: Circuit Judges Kennedy (now Justice) and Tang; District Judge Robert C. Belloni (D. Ore.)

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

ANSWER:

As an Assistant United States Attorney in the Northern District of California from 1977 to 1979, I prosecuted several hundred criminal cases in the federal district and magistrate's courts. These cases included the full range of violations of the federal criminal laws. During my second year as an AUSA, I was the resident attorney in the newly opened San Jose office, and was primarily responsible for handling criminal matters before the San Jose division of the court.

As an associate with Gibson, Dunn & Crutcher from 1979 to 1981, I was a member of the firm's Labor Section, and did a substantial amount of work in the area of employment discrimination, as well as some general business litigation.

As United States Attorney in Sacramento from 1982 to 1986, I oversaw the work of as many as 32 other lawyers. In addition to exercising administrative oversight of the office and handling a number of trials personally, I worked on a continuing basis with attorneys in the office having primary responsibility for major criminal and civil matters. This involved participation in major drug conspiracy, fraud, and public corruption investigations and prosecutions, substantial tort actions against the United States, and a broad range of other types of civil litigation.

Among the most satisfying aspects of my position as U.S. Attorney was the creation and development of an active Law Enforcement Coordinating Committee, under the program initiated by Attorney General Smith. This committee, which met regularly, was one element in a broad pattern of cooperation among federal, state and local law enforcement, which substantially enhanced the effectiveness of law enforcement within the district. Also during my term as U.S. Attorney, I personally initiated a drug demand reduction program in the Sacramento area, in the form of a week-long day camp featuring drug education, sports, and other activities. Due to the efforts of many law enforcement officers, agency employees, school teachers and school administrators, this program has thrived and expanded during the three years since my departure as U.S. Attorney.

As Deputy Solicitor General and Counselor to Solicitor General Charles Fried from 1986 to 1988, I was responsible for overseeing and participating in the preparation of U.S. Supreme Court briefs on behalf of the United States in a number of subject areas. These subject areas included civil rights, affirmative action, tort litigation (including FTCA and Bivens), Labor Department cases, and First Amendment religion cases. In that capacity, I edited approximately two hundred briefs filed in the Supreme Court, worked with other lawyers preparing for oral argument, and participated regularly in deliberations and discussions relating to the formulation of legal positions to be taken in Supreme Court briefs. I also argued eleven times in the Supreme Court and served as a confidential counselor to the Solicitor General on policy decisions confronting him.

In my position as a partner at Jones, Day, Reavis & Pogue in Washington, D.C., I have been working to develop an expanded group of attorneys specializing in appellate and legal issues litigation. In that position, I have worked closely with former Solicitor General and Dean of the Harvard Law School, Erwin N. Griswold, who has been engaged in a similar practice at Jones Day for many years.

DONALD B. AYER

II. Financial Data and Conflict of Interest (Public)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

ANSWER:

None. All interest in the partnership of the law firm of Jones, Day, Reavis & Pogue will be liquidated at the time I terminate my employment. No deferred payments of any kind will be made or received thereafter. (I will continue to receive dividends from various stocks, mutual funds, and limited partnerships as reflected on my Financial Disclosure Form [attached].)

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

ANSWER:

Since I presently own shares of stock in only one corporation (though I own interests in a number of widely diversified mutual funds), few if any disqualifications on that basis are likely. During my period in private practice, however, I have represented a significant number of major corporations, and their involvement or interest in various cases may present a number of issues of possible disqualification.

Shortly after commencing employment, I will circulate within the Department a list of stocks held and former clients as to which a conflict of interest may exist. Prior to my involvement in matters in which those entities may have an interest, they will be submitted to the principle Associate Deputy Attorney General for a determination as to whether my participation in a particular matter is appropriate, using the guidelines for disqualification adopted by the Administrative Conference of the United States (Recommendation 80-4, 1980) and applicable bar rules.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

ANSWER:

I expect to continue serving, on an unpaid basis, as a member of the vestry of St. Mary's Episcopal Church of Arlington, Virginia.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

ANSWER:

Financial Disclosure Report enclosed.

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

ANSWER:

Attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

ANSWER:

I worked as a campaign volunteer in various capacities in the 1964 Goldwater-Miller campaign, the 1968 and 1972 Nixon-Agnew campaigns, and in the 1980 Reagan-Bush campaign. I have never held any official or paid position in these campaigns.

DONALD B. AYER

III. General (Public)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

ANSWER:

I am presently participating with other lawyers at Jones, Day, Reavis & Pogue, in a capital punishment habeas corpus case, on behalf of a mentally retarded Texas death-row inmate. I expect that I will put in approximately 20-30 hours total over a period of three weeks. Also, during January of this year, I participated on a pro bono basis in preparing a U.S. Supreme Court amicus brief on behalf of the Center for State and Local Government. I spent approximately 90 hours on that brief.

During my period of government service, during August 1975 through September 1979 and from January 1982 until December 1988, I did not participate in pro bono work.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

ANSWER:

No.

SF 278 (Rev. 1/86)
5 CFR Chapter 734
U.S. Office of Personnel Management

Financial Disclosure Report

Form Approved
OMB No. 3209-0001

Page 1

Reporting Status (Check Appropriate Box)		Agency Use Only	OGE Use Only	Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Yr.)	Termination Date (If Applicable) (Month, Day, Year)
☐ Incumbent	☒ New Entrant, Nominee, or Candidate ☐ Termination Filer				
Reporting Individual's Name	Last Name AYER	First Name and Middle Initial Donald B			
Position for Which Filing	Title of Position Deputy Attorney General	Department or Agency (If Applicable) Justice			
Location of Present Office	Address (Number, Street, City, State and ZIP Code) 1450 G St., N.W., Washington, D.C. 20005	Telephone No. (Include Area Code) (202) 879-4689			
Position(s) Held With the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held Deputy Solicitor General and Counselor to the S.G. 6/86 - 12/88				

Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination Judiciary	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No

Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.	Signature of Reporting Individual Donald B. Ayer	Date (Month, Day, Year) 8/23/89
Other Review (If desired by agency)	Signature of Other Reviewer	Date (Month, Day, Year)
Agency Ethics Official's Opinion The information contained in this report discloses no conflict of interest under applicable laws and regulations.	Signature of Designated Agency Ethics Official/Reviewing Official	Date (Month, Day, Year) 7/14/87
Office of Government Ethics Use Only	Signature	Date (Month, Day, Year)

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, C, and D. (Candidates do not file Part II of Schedule D.)

- **Schedule A**—The reporting period for income (BLOCK C) and Transactions Test (BLOCK D) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part I** (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part II** (Agreements and Arrangements)—Show any agreements or arrangements as of the date of filing.
- **Schedule D**—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

(Check box if comments are continued on the reverse side) ☐

PREVIOUS EDITION USABLE

278-108

NSN 7540-01-070-8444

SF 278 (Rev. 1/85)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0002

Reporting Individual's Name: Donald B. Ayer

Assets and Income

Page Number: 2

Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal business and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A — Assets & Income Sources: Identify each asset and income source of yours, your spouse(S) and your dependent child (DC)

NONE ☐

BLOCK B — Valuation of Assets: Category of Value (A)

BLOCK C — Income: Type of Income (X); Category of Amount of Income (X)

BLOCK D — Transactions Test: If yes, complete Schd. B Part I for those assets, including those used for a loan.

S or DC	BLOCK A	B: None (or less than $1001)	B: $1,001-$5,000	B: $5,001-$15,000	B: $15,001-$50,000	B: $50,001-$100,000	B: $100,001-$250,000	B: Over $250,000	C: Dividends	C: Rent	C: Interest	C: Capital Gains	C: Excepted Trust	C: Qualified Trust	C: Other (Specify Type)	C: None (or less than $101)	C: $101-$1,000	C: $1,001-$2,500	C: $2,501-$5,000	C: $5,001-$15,000	C: $15,001-$50,000	C: $50,001-$100,000	C: Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	D: YES	D: NO
Examples	XYZ Common				x				x									x								x	
	Doe Jones & Smith, Hometown, USA			x											[illegible]									[illegible]			
1	Money Market Funds																										
2 J	Sears Liquid Asset		x						x								x										
3 J	Kemper MMkt			x					x								x										
4 J	Janus MMkt (formerly Cash Equiv Fd)		x						x								x										
5 J	AAII MMkt					x			x										x								
6 DC	Capital Preservation Fd		x						x								x										
7 DC	Kemper MMkt		x						x								x										
8 DC	Vanguard Federal MMkt (CNA Trust)				x				x										x								
9 DC	Vanguard Federal MMkt (AEA Trust)				x				x								x										
10																											

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[illegible]
[illegible]
[illegible] of Personnel Management

Form approved
OMB No. [illegible]

Reporting Individual's Name		Page Number	Schedule
Donald B. Ayer	**Assets and Income**	3	A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.	**All Filers:** In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.	**All Filers:** In BLOCK C report the type and amount of income exceeding $100 received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.	**Incumbents and Termination Filers only:** In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources			BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
Identify each asset and income source of yours, your spouse(S) and your dependent child (DC) NONE ☐			Category of Value (X)							Type of Income (X)						Other (Specify Type)	Category of Amount of Income (X)								Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If yes, complete Sched. B Part I for these assets (including those sold for a loss)	
S or DC			None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust		None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000			YES	NO
	Example	X Y Z Common				x				x									x						—		x	
		Doe Jones & Smith, Hometown, USA			x											partnership income									[illegible]			
1		Tax Exempt Mutual Funds																										
2 J		Vanguard Muni Bd MMkt						x		x											x							
3		Vanguard Muni Bd MMkt					x			x											x							
4 S		Vanguard Muni Bd MMkt					x			x										x								
5 DC		Vanguard Muni Bd MMkt-CNA				x				x										x								
6 DC		Vanguard Muni Bd MMkt-AEA			x					x									x									
7 J		T.R. Price Tax Ex MMkt		x						x							x											
8																												
9																												
10																												

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SF 278 (Rev. 1/87)
5 CFR Chapter [illegible]
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name	Assets and Income	Page Number	4	Schedule A
Donald B. Ayer				

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

		BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
		Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)						Other (Specify Type)	Category of Amount of Income (X)								Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If yes, complete Sched. B Part I for these assets (including those sold for a loss).	
			None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust		None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000			YES	NO
S or DC	Examples	X Y Z Common				x				x									x						—		x	
		Doe Jones & Smith, Hometown, USA			x											partnership income									$60,000			
1		IRA and Retirement																										
2		IRA-Vanguard Fed. MMkt				x				x										x								
3	S	IRA-Vanguard Fed. MMkt			x					x									x									
4		IRA- Polycomp (formerly Western States Pension Co)		x						x								x										
5	S	SAME		x						x								x										
6		Personal Investment Annuity Account with Safeco,																										
7		Assets invested in Vang. Wellesley Income Fd					x			x								x										
8		Personal Investment Annuity Account was formerly					x			x											x							
9		(during reporting period) invested in Fidelity Cash Res.	(no longer held at close of period)																									
10	1	Fed Employees Retirement	no longer held at close of period			x				x									x									

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SF 278 (Rev. 1/87)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0001

Reporting Individual's Name		Page Number	Schedule
Donald B. Ayer	**Assets and Income**	5	A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

		BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
		Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)								Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If yes, complete Sched. B Part I for these assets (including those sold for a loss)	
S or DC			None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000			YES	NO
	Example	X Y Z Common				x				x									x						—		x	
		Doe Jones & Smith, Hometown, USA			x											partnership income									[illegible]			
	1	Common Stocks																										
	2	Baker Hughes Common					x			x			y						x			y z=total						
S	3	Baker Hughes Common					x			x			y						x			y z=total						
DC	4	Baker Hughes Common (AEA Trust)		x						x								x										
DC	5	Baker Hughes Common-CNA	not held at close of period			x				x			y					x				y z=total						
	6																											
	7																											
	8																											
	9																											
	10																											

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U.S. Office of Personnel Management

Form Approved OMB No. [illegible]

Reporting Individual's Name		Page Number	Schedule
Donald B. Ayer	Assets and Income	6	A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

	BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC) NONE ☐	Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)								Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If yes, complete Sched. B Part I for these assets (including those sold) for 2 Sess.	
S or DC		None (or less than $1001)	$1,001 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	Over $100,000			YES	NO
Example	X Y Z Common				x				x									x						—		x	
	Doe Jones & Smith, Hometown, USA			x											private income									$60,000			
1 J	Mutual Funds Acorn Fund		x						x								x										
2 J	Fidelity Select American Gold			x					x							x											
3 J	Janus Venture Fd			x					x								x										
4 J	T.R. Price Equity Inc Fd		x						x							x											
5 J	BB&K Diversa Fd	no longer held at close of period			x				x								x										
6 J	Scudder International Stk			x					x								x										
7 J	Vanguard Index 500			x					x								x										
8 J	Vang Wellsley Income Fd				x				x								x										
9	(Note: This joint investment in Wellsley Inc Fd																										
10	is separate from the one listed on page 4 under Personal Investment Annuity Account.)																										

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SF 278 (Rev. 1/87)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0001

Reporting Individual's Name Donald B. Ayer	**Assets and Income**	Page Number	7	Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

		BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
		Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)										If yes, complete Sched. B Part I for these assets (excluding those sold for a loss).	
S or DC			None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
	Example	X Y Z Common				x				x									x						—		x	
	Example	Doe Jones & Smith, Hometown USA			x											ptnrshp income									[illegible]			
1		Real Estate Limited Ptnrshps																										?
2		San Tomas Investment C. 3000 Sandhill Road																										
3		Menlo Park, CA 94025 (office/lt indus bldgs)				x				x						ptnrship inc									$2332 for 1988 only. 1989 not available			
4	S	SAME				x				x						ptnrship inc									SAME			
5		Deep Clover Properties																										
6		3800-A Main Street Dallas, TX 75226			x					x						ptnrship inc									-$1505 for 1988 only. 1989 not available			
7	S	Potatoe Chip Properties 3800-A Main Street			x					x						ptnrship inc									-$1297 for 1988 only 1989 not available			
8		Dallas, TX 75226 (both Texas partnerships invested in																										
9		office buildings and light industrial real estate.)																										
10																												

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U.S. Office of Government Ethics

Reporting Individual's Name	Assets and Income	Page Number	8	Schedule A
Donald [illegible]				

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

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Incumbents and Termination Filers only: In BLOCK D for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

		BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																		BLOCK D Transactions Test	
		Identify each asset and income source of yours, your spouse(S) and your dependent child (DC) NONE ☐	Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)											If yes, complete Schedule ... Part I for these assets (including those sold for a loss)	
S or DC			None (or less than $1,001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
	Example	X Y Z Common				x				x									x								x	
		Doe Jones & Smith, Hometown, USA			x											partnership income									300,000			
1	1	Note from Edward McCormack and Deborah Eva as proceeds from sale of cabin in Calif.				x						x	y							x y	z=total				$15,483.9	Amount owed to me and my wife on entire note, much of which constitutes return of capital rather than income)(note paid in full after 8/23/		
2																												
3	DC	EE Bonds (CNA Trust)				x						x						x										
4	DC	EE Bonds (AEA Trust)				x						x						x										
5	1	Jones, Day, Reavis & Pogue														ptnrship inc									$301,800	for calendar year 1989 and last 2 days of 1988, a significant amount of which will be deferred ... payment in 1990 and 19 (NOTE: $300,000 is earned for all of 1989, so actual earnings will depend on when employment is terminated		
6	DC	Allison E. Ayer Trust	Assets, value, income & category of income listed on pp. 2-8 of this form.																									
7	DC	Allison E. Ayer Trust		Same																								
8	DC	Christopher N. Ayer Trust		Same																								
9	DC	Christopher N. Ayer Trust		Same																								
10																												

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Office of Personnel Management

Reporting Individual's Name
Donald B. Ayer

Page Number	9	Schedule C

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts.

NONE ☐

	Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	$10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1981	13%	25 yrs			X		
	John Jones, 123 J St., Washington, DC	Promissory note	1979	10%	on demand	X				
1	None except mortgage on home.									
2										
3										
4										
5										
6										

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date (Mo., Yr.)
Example	Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/83	Doe Jones & Smith, Hometown, USA	7/78 ptnership agmnt
	Pursuant to letter agreement signed 12/12/88, will receive deferred partnership income for period actually worked, on same terms as present partners.	Jones, Day, Reavis & Pogue, Washington, D.C.	12/12/88 letter agreement.
	If still employed by Jones Day on 12/29/89, I will be eligible to place money in the firm's Keogh Plan. If that action is taken, I will arrange to have the money invested ~~in a widely diversified mutual fund. Should I be eligible to make such an investment,~~ I will inquire further to assure ethical propriety before doing so.		~~12/12/88~~ letter agree- ~~and partnership~~ agreement signed ~~12/88~~.

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278-108

SF 278 (Rev. 1/89)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0001

Page Number	10	Schedule D

Reporting Individual's Name
Donald B. Ayer

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/83	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/76	11/83
	Partner, Jones, Day, Reavis & Pogue, Washington, D.C.	Law Firm	Partner	12/88	Present
	Director, National Association of Former U.S. Attorneys	Professional	Board of Directors	3/89	Present
	Trustee, Alison E. Ayer Trust 10/30/85 (co-trustee w/2 others)	Trust for daughter's educ.	Trustee	10/85	Present
	Trustee, Alison E. Ayer Trust 3/20/89 (co-trustee w/2 others)	Trust for daughter's educ.	Trustee	3/89	Present
	Trustee, Christopher N. Ayer Trust 10/30/85 (co-t'ee w/2 others)	Trust for son's educ.	Trustee	10/85	Present
	Trustee, Christopher N. Ayer Trust 3/20/89 (co-t'ee w/2 others)	Trust for son's educ.	Trustee	3/89	Present

Part II
Compensation In Excess Of $5000 Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith), Hometown, USA	Legal services in connection with university construction
	Jones, Day, Reavis & Pogue, Washington, D.C.	Legal Services
	Clients (Personal Services greater than $5000)	
	Cardinal Industries, Inc.	Legal services
	Empire of America	Legal services
	Georgia Pacific	Legal services
	Jordache	Legal services

PREVIOUS EDITION USABLE

SF 278 (Rev. [illegible])
5 CFR Chapter [illegible]
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Page Number	11	Schedule D

Reporting Individual's Name
Donald B. Ayer

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/83	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/78	11/83

Part II
Compensation In Excess Of $5000
Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith), Hometown, USA	Legal services in connection with university construction
	L.D. Brinkman Corp.	Legal services
	M.A. Mortenson Company	Legal services
	Northrop Corporation	Legal services
	Pima Federal Savings & Loan (Heron International)	Legal services
	Roche Products	Legal services
	Standard Federal Savings & Loan	Legal services

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[illegible]

Form Approved
OMB No. [illegible]

Reporting Individual's Name Donald B. Ayer	Page Number	12	Schedule D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	[illegible]	[illegible]
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	[illegible]	[illegible]

Part II
Compensation In Excess Of $5000
Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction
	TWA	Legal services
	United Services Automobile Association	Legal services
	Westinghouse	Legal services

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U.S. Department of Justice

Washington, D.C. 20530

SEP 27 1989

Honorable Frank Q. Nebeker
Director, Office of Government Ethics
1201 New York Avenue
Suite 500
Washington, D.C. 20005

Dear Judge Nebeker:

Enclosed please find an amendment to the Financial Disclosure Report filed by Donald B. Ayer, who has been nominated by President Bush to serve as Deputy Attorney General of the United States. This amendment, which has also been supplied to the Chairman of the Senate Judiciary Committee, does not affect the Department's certification that Mr. Ayer's Report discloses no conflicts of interest under applicable laws and regulations.

Sincerely,

Janis A. Sposato
Alternate Designated Agency
Ethics Official

890470-202-500
7414:evm:0023a

JONES, DAY, REAVIS & POGUE

ATLANTA
AUSTIN
CHICAGO
CLEVELAND
COLUMBUS
DALLAS
GENEVA

HONG KONG
LONDON
LOS ANGELES
NEW YORK
PARIS
PITTSBURGH
RIYADH
TOKYO

METROPOLITAN SQUARE
1450 G STREET, N.W.
WASHINGTON, D.C. 20005-2088

TELEPHONE 202 879 3939
TELEX DOMESTIC 892410
TELEX INTERNATIONAL 64363
CABLE ATTORNEYS WASHINGTON
TELECOPIER 202 737 2832
WRITER'S DIRECT NUMBER
(20 79-4689

September 26, 1989

Mr. Harry H. Flickinger
Assistant Attorney General
for Administration
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Flickinger:

Please accept this letter as an amendment to my Financial Disclosure Report, which was filed on August 23, 1989 in connection with my nomination to the position of Deputy Attorney General. The law firm by which I am currently employed, Jones, Day, Reavis & Pogue of Washington, D.C., has agreed to pay my annual salary, prorated in accordance with the percentage of the year I am employed by the firm, in a lump sum upon my resignation from the firm. Therefore the references on pages eight and nine of the Report to "deferred" income are no longer relevant. If I am confirmed as Deputy Attorney General, I will resign my partnership in the firm and all professional and financial ties with the firm will be severed.

Sincerely,

Donald B. Ayer

Donald B. Ayer

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS	
Cash on hand and in banks (MMkt)	460,000
U.S. Government securities—add schedule	30,000
Listed securities—add schedule	291,370
Unlisted securities—add schedule	104,000
Accounts and notes receivable:	0
Due from relatives and friends	
Due from others	
Doubtful	
Real estate owned—add schedule	365,000
Real estate mortgages receivable	0
Autos and other personal property (est.)	40,000
Cash value—life insurance	0
Other assets—itemize:	0
Total assets	1,290,370

LIABILITIES	
Notes payable to banks—secured	
Notes payable to banks—unsecured	
Notes payable to relatives	
Notes payable to others	
Accounts and bills due	
Unpaid income tax	
Other unpaid tax and interest	
Real estate mortgages payable—add schedule	126,470
Chattel mortgages and other liens payable	
Other debts—itemize:	
Total liabilities	126,470
Net worth	1,290,370
Total liabilities and net worth	1,163,900

CONTINGENT LIABILITIES	
As endorser, comaker or guarantor	
On leases or contracts	
Legal Claims	
*Provision for Federal Income Tax	80,000
Other special debt	
*Provision for state tax	12,000

GENERAL INFORMATION	
Are any assets pledged? (Add schedule.)	no
Are you defendant in any suits or legal actions?	no
Have you ever taken bankruptcy?	no

*Provisions for federal and state taxes relate to amounts not owing until April 15, 1990.

NET WORTH STATEMENT - SCHEDULE

ASSETS

U.S. Government Securities

EE Bonds (purchase price 1988)	30000.00

Listed Securities

Baker Hughes Common Stk (5730 sh.)	123195.00
Mutual Funds:	
Acorn	6956.00
Fidelity Select American Gold	7981.59
Janus Venture	11744.74
Price Equity Income	3294.79
Scudder International	11987.38
Vanguard Index Trust	11440.09
Wellesley Income Fund	114769.45
	291369.54

Unlisted Securities

Real Estate Limited Partnerships (values approximate)

San Tomas Investment Co.	80000.00
Deep Clover Properties	12000.00
Potatoe Chip Properties	12000.00
	104000.00

Real Estate Owned

Home (1328 Portia Place, McLean, VA)	365000.00

LIABILITIES

Real Estate Mortgages Payable

Mortgage on home	126470.29

K. MICHAEL MOORE

Birth:	July 17, 1951	Coral Gables, Florida
Marital Status:	Married	Eva Catherine Moore four children
Education:	1969 - 1972	Florida State University B.A. degree
	1973 - 1976	Fordham Law School J.D. degree
Bar:	1976	Florida
Experience:	1976 - 1981	Assistant U.S. Attorney Southern District of Florida
	1981 - 1986	Assistant U. S. Attorney Northern District of Florida
	1982 - 1983	Court Appointed U.S. Attorney Northern District of Florida
	1987 - present	United States Attorney Northern District of Florida (Interim 1/87-4/87, Ct Appt 4/87- 5/87, Presidential 5/87-pres)
Office:	227 North Pronough Street Suite 4014 Tallahassee, Florida 32301	
Home:	7034 Chimney Swift Hollow Road Tallahassee, Florida 32312	

To be Director of the United States Marshals Service

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

   KEVIN MICHAEL MOORE

2. Address: List current place of residence and office address(es).

Residence:	7034 Chimney Swift Hollow Road Tallahassee, FL 32312
Office:	U.S. Attorney's Office 227 N. Bronough St., Suite 4014 Tallahassee, FL 32301 Tel. No. 904/681-7360

3. Date and place of birth.

   July 17, 1951, Coral Gables, Florida

4. Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

   Married to Eva Catherine Moore, maiden name, Mathis. My wife is not employed.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   Florida State University
   Dates of attendance: 9/69 to 8/72
   Degree: Bachelor of Arts
   Date degree granted: 8/72

   Fordham Law School
   Dates of attendance: 9/73 to 5/76
   Degree: Juris Doctor
   Date degree granted: 5/76

   University of Miami, School of Law.
   Dates of attendance: 1979 and 1980
   Gift & Estate Tax Program
   Degree: None

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

U.S. Department of Justice, 1976 to present

Presidentially Appointed U.S. Attorney, Northern District of Florida, May 20, 1987 to present

Court Appointed U.S. Attorney, by Chief Judge William Stafford, Northern District of Florida, May 1, 1987 to May 20, 1987

Attorney General Appointed U.S. Attorney, Northern District of Florida, Jan. 1987 to April 30, 1987

Chief Assistant U.S. Attorney, under U.S. Attorney W. Thomas Dillard, Northern District of Florida, March 1983 to Dec. 31, 1986;

Court Appointed U.S. Attorney, by Chief Judge William Stafford, Northern District of Florida, June 1982 - March 1983

Supervisory Assistant U.S. Attorney under U.S. Attorney Nickolas Geeker, Northern District of Florida, February 1981 - June 1982

Assistant U.S. Attorney, Southern District of Florida, June 1976 - February 1981

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or date, serial number and type of discharge received.

No

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

I received a Special Commendation from Attorney General Richard Thornburg on September 26, 1989, for my efforts in support of the office management of United States Attorney's offices. In 1981, I received a Special Commendation from Attorney General William French Smith in connection with two successful prosecutions. I have also received certificates and letters of appreciation from the U.S. Department of Health & Human Services, the U.S. Drug Enforcement Administration, U. S. Customs and U. S. Secret Service in connection with cases prosecuted on their respective behalfs.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association 1976 to Date
Federal Bar Association 1976 to date
Tallahassee Bar Association 1981 - Date

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Rotary International Downtown Tallahassee

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Florida Bar, 1976 to Date
U.S. District Court, So. Dist. of Fla., 1976 to Date
U.S. Court of Appeals, 5th Cir., 1977 to Date
U.S. Court of Appeals, 11th Cir., 1980 to Date
U.S. Supreme Court, 1981 to Date
U.S. District Court, No. Dist. of Fla., 1981 to Date

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

None

13. Health: What is the present state of your health? List the date of your last physical examination.

My last physical examination was 5/89. My health is good.

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or

appointed. State (chronologically) any unsuccessful candidacies for elective public office.

See answer to Question #6 above.

15. Legal Career:

May 1976 - Graduated from Fordham Law School
June 1976 - Studied for Florida Bar
July 1976 to November 1976 -- Law clerk for U.S. Attorney's Office, SD of Florida, pending passing the Florida Bar and appointment as Assistant U.S. Attorney
Nov. 1976 to Feb. 1981 - Assistant U.S. Attorney, SD of FL
Feb. 1981 to June 1982 - Assistant U.S. Attorney, ND of FL
June 1982 to Mar. 1983 - Court Appointed U.S. Attorney, NDFL

Mar. 1983 to Dec. 1986 - Chief Assistant U.S. Attorney, NDFL
Jan. 1987 to Apr. 1976 - U.S. Attorney, Attorney General appointment
May 1, 1987 to May 20, 1987 - U.S. Attorney, Court Appointed
May 20, 1987 to date - Presidentially Appointed U.S. Attorney

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

No

2. whether you practiced alone, and if so, the addresses and dates;

No

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

See above

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

The general character of my legal practice has been extensive federal civil, criminal and appellate litigation. My first five years of practice were devoted almost exclusively to federal criminal trial and federal criminal appellate litigation. Since then, I have split my caseload between both civil and criminal litigation. In addition, over the past eight years, I have assumed increasing levels of managerial responsibilities in the conduct of litigation on behalf of the United States as a supervisory assistant United States attorney, chief assistant United States attorney and United States Attorney.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Federal investigative agencies and departments

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

As an assistant United States attorney, I appeared in court frequently. As United States Attorney, I have appeared in court occasionally.

2. What percentage of these appearances was in:

(a) federal courts; 99%
(b) state courts of record; 1%
(c) other courts. 0%

3. What percentage of your litigation was:

(a) civil;
(b) criminal.

1976 - 1981 100% criminal
1981 - 1989 50% criminal
50% civil

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

The precise number of cases tried to verdict or judgment is not readily available. As an assistant U.S. attorney, however, I think I can fairly say that over an 11-year career I have personally tried to verdict or judgment in excess of fifty criminal and civil cases.

5. What percentage of these. trials was:
   (a) jury;
   (b) non-jury.

With the exception of six federal tort claims cases which were tried non-jury and a handful of criminal bench trials, the remainder of my trials (approximately 90%) have been jury trials.

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

CRIMINAL LITIGATION

1. United States v. Matta, PCR 86-0511, Juan Ramon Matta Ballesteros was an international narcotics dealer and fugitive from the United States until his apprehension in the spring of 1988. His arrest in Honduras ignited riots and attacks on the U. S. Embassy there. Matta was returned to the United States to stand trial for his 1972 escape from Eglin prison camp and on narcotics charges. Matta was also a suspect in the torture and shooting death of D.E.A. agent Enrique Camarena. As

United States Attorney, I personally tried Matta on the escape charge which resulted in his conviction.

(a) the date of representation was 1988;
(b) the name of the court was the United States District Court for the Northern District of Florida and the name of the judge before whom the case was litigated was Honorable Roger Vinson; and
(c) the individual name, address, and telephone number of counsel for defendant was Martin R. Stolar, 351 Broadway - 4th Floor, New York New York 10013, (212) 219-1919.

2. U.S. v. Bascaro, 742 F.2d 1335 (11th Cir. 1984)

This was a multi-defendant narcotics conspiracy to import and distribute in excess of 200 million dollars of marijuana. I represented the United States as trial attorney. This representation included a defense of a wiretap authorization, three interlocutory appeals (See: U.S. v. Hobson, 672 F.2d 825 (11th Cir. 1982) and U.S. v. James, 674 F.2d 886 (11th Cir. 1982), lengthy pre-trial hearings and a three-week trial. All defendants were convicted, including a member of the Florida Bar, and their convictions were affirmed on appeal. One defendant received a five-year sentence, and the remaining defendants received sentences from 35 years to a maximum of 60 years, without parole, for engaging in a continuing criminal enterprise.

(a) the date of representation was 1982 - 1984;
(b) the name of the court was the U.S. District Court for the Northern District of Florida; the name of the judge before whom the case was litigated was The Honorable Lynn C. Higby;
(c) the names, addresses and telephone numbers for the defendants' counsel are as follows:

1. Defendant Bascaro: Max B. Kogen
Suite 205
520 Brickell Key Drive
Miami, FL 33131
(305) 371-2661

2. Defendant Waldrop: Albert Krieger
1899 S. Bayshore Drive
Miami, FL 33133
(305) 377-0802

3. Defendant Hobson: Miquel Orta
#0-205
520 Brickell Key Drive
Miami, FL 33131
(305) 371-26614.

4. Defendant Villanueva: Nathan Diamond
151 SE 14th Terrace
Miami, FL 33131
(305) 371-5000

5. Defendant James: Richard Sharpstein
3043 Grand Avenue
Penthouse One Coconut Grove
Miami, FL 33133
(305) 442-8100

6. Defendant Fernandez: Douglas Hartman
14243 SW 80th Avenue
Miami, FL 33158
(305) 576-7512

3. U.S. v. Peaden, 727 F.2d 1493 (11th Cir. 1984) This was a narcotics conspiracy against a former Florida State Legislator who was attempting to sell cocaine in order to raise money to run for sheriff. I represented the United States at trial and on appeal. Peaden was convicted and his conviction was affirmed on appeal.

(a) the date of representation was 1983
(b) the name of the court was the United States District Court for the Northern District of Florida; the name of the judge before whom the case was litigated was The Honorable Lynn C. Higby.
(c) the name, address and telephone number of the defendant's counsel was: John Daniel, 315 E. Fourth Street, P. O. Box 2522, Panama City, FL 32401, (904) 763-6565

4. U.S. v. Joel David, TCR 84-7039 (1985), Joel David was a licensed dentist. During the period in question he received the largest dollar amount of medicaid reimbursement in the State of Florida. David was convicted on eight counts. Seven counts related to paying individuals for soliciting medicaid patients and one count related to filing a false claim. The jury could not reach a verdict on 41 other counts. David

did not appeal the case and was sentenced to 30 months incarceration.

(a) the date of representation was 1985;
(b) the name of the court was the United States District Court for the Northern District of Florida and the name of the judge before whom the case was litigated was Honorable Chief Judge William Stafford; and
(c) the individual name, address, and telephone number of counsel for defendant was:
E. C. Deeno Kitchen, 305 S. Gadsden Street, P. O. Box 1170, Tallahassee, FL 32301, (904) 224-9135.

5. U.S. v. Edward Fogg, 652 F.2d 551 (5th Cir. Unit B, 1981) Fogg was chairman of the Board of Farm Stores Dairy, Inc., a closely held chain of drive-in south Florida dairy stores. He was a former Dade County, Florida, Mayor and Trustee of the University of Miami. I was the trial and appellate attorney for the United States Fogg was convicted of tax evasion involving a scheme in which he failed to report kickbacks from his orange juice supplier. Fogg was sentenced to 30 months incarceration. His conviction was affirmed on appeal.

(a) the date of representation was 1981;
(b) the name of the court was the United States District Court for the Southern District of Florida and the name of the judge before whom the case was litigated was The Honorable Edward Davis; and
(c) the individual name, address, and telephone number of counsel for defendant was C. Harris Dittmar, 101 East Adams Street, Jacksonville, FL 32202, (904) 353-0211.

CIVIL LITIGATION

6. United States v. Stromsness, PCA 85-4446. This was a medical malpractice case in which Air Force medical personnel were alleged to have been negligent in the treatment and delivery of a brain damaged baby. The case was complicated by the Air Force's loss of a critical medical record known as the fetal monitoring strip which would have revealed the existence or absence of fetal stress. Plaintiff's counsel, former federal judge Lynn C. Higby, sought recovery in the several million dollar range. My offer of settlement of $200,000 was quickly rejected. After pre-trial discovery lasting over two years, the case was tried on

the issue of liability. After trial but before judgment, Plaintiff's counsel offered to settle the case for the $200,000 amount he had rejected two years earlier. I rejected this offer and he finally accepted $100,000 in settlement. I consider the resolution to be highly favorable to the United States particularly when considered in the context of verdicts for similar cases and given the Air Force's loss of its own critical medical records. I personally handled the case as United States Attorney.

(a) the date of representation was 1988;
(b) the name of the court was the United States District Court for the Northern District of Florida and the name of the judge before whom the case was litigated was Honorable Winston Arnow; and
(c) the individual name, address, and telephone number of counsel for defendant was Lynn C. Higby, P. O. Box 124, Panama City, FL 32402, (904) 763-1787.

7. Terrell v. United States, 783 F.2d 1562 (11th Cir. 1986) Terrell sued the United States Air Force, the State of Florida, Bay County, Florida, and the City of Parker, Florida, for injuries sustained when he stepped in a hole. I was the trial and appellate attorney for the United States. The United States was originally found partly liable. Thereafter, a re-trial was granted which resulted in a finding of no liability on the part of the United States before the Honorable Roger Vinson. This finding was affirmed on appeal.

(a) the date of representation was 1986;
(b) the name of the court was the United States District Court for the Northern District of Florida and the name of the judge before whom the case was litigated was The Honorable Lynn C. Higby; and
(c) the individual name, address, and telephone number of counsel for defendant was Patrick J. Fancheux, 201 E. 4th Street, Panama City, FL 32401, (904) 763-3800.

8. Rossano v. United States, 86-3158 (11th Cir. 1986) (unpublished); GCA 84-0064, In this case, plaintiff Eleanor Rossano sued the U.S. Veteran's Administration hospital at Gainesville, Florida, alleging negligent medical treatment in failing to admit her husband for psychiatric care after he experienced suicidal

thoughts. Mr. Rossano returned home and two days later committed suicide by drinking malathion. I was the trial and appellate attorney for the United States and presented evidence, including expert psychiatric testimony, to demonstrate the absence of medical negligence. Judgment was entered for the United States and affirmed on appeal.

(a) the date of representation was 1986;
(b) the name of the court was the U.S. District Court for the Northern District of Florida and the name of the judge before whom the case was litigated was Honorable Maurice M. Paul; and
(c) the individual name, address, and telephone number of counsel for defendant was Robert J. Denson, P. O. Box 1287, Gainesville, FL 32602, (904) 378-8888.

9. Holley v. United States, TCA 81-1058, Holley sued the United States Coast Guard on admiralty and federal tort claims. Holley alleged that the Coast Guard and other federal agencies were negligent in the charting of waters off the gulf coast of Florida. The alleged negligence caused him to run his ship aground. I was the trial attorney for the United States and introduced evidence to demonstrate Holley had failed to have on board current available United States Coast Guard guides to navigation which would have alerted him to the shallow waters. After a finding of no negligence on the part of the United States, judgment was entered for the United States.

(a) the date of representation was 1983;
(b) the name of the court was the United States District Court for the Northern District of Florida and the name of the judge before whom the case was litigated was Honorable Maurice M. Paul; and
(c) the individual name, address, and telephone number of counsel for defendant was Robert Gaines, Beggs & Lane, P. O. Box 12950, Pensacola, FL 32576, (904) 432-2451.

10. Burd v. United States, TCA 84-7034, Burd alleged that a Gainesville, Florida, Veterans Administration physician was negligent in the treatment and follow-up care of Burd. I was the trial attorney for the United States. The physician had inserted an intra ocular lens into Burd's eye. The lens turned out to be too small but Burd's vision still was improved. Eighteen months

later, and despite improved vision, another Veterans Administration doctor removed the lens. That Veterans Administration doctor eventually testified as an expert against the first Veterans Administration doctor. Burd alleged that his original physician had been negligent in putting in the wrong size lens and again negligent in failing to remove the lens when the physician learned that the lens was too small. The court found that the physician was not negligent in either his sizing techniques or his decision not to immediately remove the lens. The court did find that on one occasion the physician failed to provide medication for pain associated with an irritation of the eye and awarded $5,000.00. In my opinion, given the potential exposure and the substantial damages sought, I considered the award to be minimal and to be a highly favorable resolution for the United States.

(a) the date of representation was 1985;
(b) the name of the court was the United States District Court for the Northern District of Florida and the name of the judge before whom the case was litigated was Honorable Chief Judge William Stafford; and
(c) the individual name, address, and telephone numbers of counsel for defendant was Michael Coppins, P. O. Box 1674, Tallahassee, FL 32302, (904) 224-6191.

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

On behalf of the Executive Office for United States Attorneys, I have evaluated and assisted others in evaluating the legal management operations of the following United States Attorneys Offices:

Middle District of Alabama
District of Minnesota
Northern District of Indiana
Eastern District of California
Southern District of New York
Northern District of Texas

This evaluation activity essentially serves to assess, with on-site visits, the performances of United States Attorneys Offices in their delegated duties.

In addition to my current service as United States Attorney, I have served as a court appointed United States attorney on two occasions, chief assistant United States attorney from 1982-1986, and supervisory assistant United States attorney from 1981-82. In these capacities, I have directed and supervised a variety of legal management functions in the areas of administration, personnel, budget, finance, procurement, space and security. My legal activities have also involved significant representational and liaison work with local, state and federal law enforcement officials, state and federal judicial officers, the media and the general public.

I am a current member of the Attorney General's Advisory Committee (AGAC) of United States Attorneys. The AGAC serves as an advisory body to the Attorney General on a wide variety of legal issues confronting the Department of Justice and the United States Attorneys offices. I am Chairman of the Office Management Subcommittee of the AGAC. This committee considers management concerns of the United States attorneys and recommends proposals for improvement to the AGAC. I am also a member of the Budget Subcommittee of the AGAC. I have also served on three ad hoc committees of the AGAC which have addressed (1) the nationwide procurement of a computer system for the United States Attorneys' offices (2) an examination of the evaluation and review program of United States Attorneys offices' legal management operations and (3) the career retention of assistant United States attorneys. Finally, I currently serve as the 1989 pool board manager for the Performance Management Recognition System (PMRS) of the United States Attorneys' offices.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

If any potential conflicts arise, or questions are raised, I would seek appropriate guidance from U. S. Department of Justice ethics officials.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Salary: U.S. Government, 1989 - $78,600 per annum
U.S. Government, 1988 - $75,500 per annum

Other items: See attached Financial Disclosure Report

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			
Cash on hand and in banks	5	000	00
U.S. Government securities—add schedule			
Listed securities—add schedule			
Unlisted securities—add schedule			
Accounts and notes receivable:			
Due from relatives and friends			
Due from others			
Doubtful			
Real estate owned—add schedule	225	000	00
Real estate mortgages receivable			
Autos and other personal property	16	000	00
Cash value—life insurance			—
Other assets—itemize:			
Civil Service Retirement	37	000	00
FERS Thrift Savings	15	000	00
Total assets	298	000	00

LIABILITIES			
Notes payable to banks—secured	0		
Notes payable to banks—unsecured	0		
Notes payable to relatives	0		
Notes payable to others	0		
Accounts and bills due	current to month		
Unpaid income tax	0		
Other unpaid tax and interest	0		
Real estate mortgages payable—add schedule	95	500	00
Chattel mortgages and other liens payable	0		
Other debts—itemize:	NONE		
Total liabilities	95	500	00
Net worth	202	500	00
Total liabilities and net worth	298	000	00

CONTINGENT LIABILITIES			
As endorser, comaker or guarantor	NONE		
On leases or contracts	NONE		
Legal Claims	NONE		
Provision for Federal Income Tax	NONE		
Other special debt	NONE		

GENERAL INFORMATION			
Are any assets pledged? (Add schedule.)	NO		
Are you defendant in any suits or legal actions?	NO		
Have you ever taken bankruptcy?	NO		

Real Estate Owned - Schedule
Personal Residence, 7034 Chimney Swift Hollow Rd., Tallahassee, Florida 32312

Schedule of Real Estate Mortgages:

1. Pioneer Federal S&L (Approx)	$94,000.00
2. Sunline Equity Account (Approx Outstanding Balance)	1,500.00
	$95,500.00

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U.S. Office of Personnel Management

Financial Disclosure Report

Form Approved
OMB No. [illegible]

Page

Reporting Status (Check Appropriate Box)
☐ Incumbent ☒ New Entrant, Nominee, or Candidate ☐ Termination Filer

Agency Use Only:

OGE Use Only:

Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Yr.):

Termination Date (If Applicable) (Month, Day, Year):

Reporting Individual's Name
Last Name: Moore
First Name and Middle Initial: Kevin M.

Position for Which Filing
Title of Position: Director, U.S. Marshal's Service
Department or Agency (If Applicable): U. S. Department of Justice

Location of Present Office
Address (Number, Street, City, State and ZIP Code): Suite 4014, 227 N. Bronough Street
Tallahassee, Fl. 32301
Telephone No. (Include Area Code): 904/681-7360

Position(s) Held With the Federal Government During the Preceding 12 Months (If Not Same as Above)
Title of Position(s) and Date(s) Held: U.S. Attorney, N. D. Fl., U.S. Department of Justice
January 1, 1987 to date

Presidential Nominees Subject to Senate Confirmation
Name of Congressional Committee Considering Nomination: Senate Judiciary
Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No

Certification
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.
Signature of Reporting Individual: K. M. Moore
Date (Month, Day, Year): June 24th, 1989

Other Review (If desired by agency)
Signature of Other Reviewer:
Date (Month, Day, Year):

Agency Ethics Official's Opinion
The information contained in this report discloses no conflict of interest under applicable laws and regulations.
Signature of Designated Agency Ethics Official/Reviewing Official:
Date (Month, Day, Year):

Office of Government Ethics Use Only
Signature:
Date (Month, Day, Year):

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

(Check box if comments are continued on the reverse side) ☐

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A (except for BLOCK D), C, and D. (Candidates do not file Part II of Schedule D.

- **Schedule A**—The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part I** (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part II** (Agreements and Arrangements)—Show any agreements or arrangements as of the date of filing.
- **Schedule D**—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

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NSN 7540-01-070-8444

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OMB No. [illegible]

Reporting Individual's Name	Assets and Income	Page Number	Schedule
K.M. Moore		2	A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

	BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)										If yes, complete Schd. B Part I for these assets including those sold for a loss.	
S or DC		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
Examples	X Y Z Common				X				X									X						—		X	
	Doe Jones & Smith, Hometown, USA			X											ptnrshp income									$50,000			
1	Purchase Money Note & Mortgage 2891 Seminole St., Mia., Fla.			No longer held at end of reporting period							X									X							
2	Quick & Reilly, Inc./Broker N.Y., N.Y. Cash Acc't #203-23138			No longer held at end of 1988							X						X										
3	Quick & Reilly, Inc./Broker N.Y.,N.Y. Western Co. Stock(WSN)			No longer held at end of 1988								X					X										
4	Anchor Savings Bank Acc't #198000661728		X								X						X										
5	Thrift Savings Plan FERS/G&C Funds				X				X		X								X			Bi-weely Payroll Deduction					
6 DC	US Savings Bonds		X								X						X										
7 DC	US Savings Bonds		X								X						X										
8 DC	US Savings Bonds		X								X						X										
9 DC	US Savings Bonds		X								X						X										
10																											

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Form Approved
OMB No. 3209-0001

Reporting Individual's Name

K. M. Moore

Page Number	3	Schedule C

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts.

NONE ☒

		Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (X)				
							$10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
S or DC	Example	First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1981	13%	25 yrs.			X		
		John Jones, 123 J St., Washington, DC	Promissory note	1979	10%	on demand	X				
1											
2											
3											
4											
5											
6											

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE ☒

	Status and Terms of any Agreement or Arrangement	Parties	Date (Mo., Yr.)
Example:	Pursuant to partnership agreement, will receive [illegible] & partnership share calculated on service performed through 11/83	Doe Jones & Smith, Hometown, USA	7/76 partnership agmnt.

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U.S. Office of Personnel Management

OMB No. 3209-0001

Reporting Individual's Name

K.M. Moore

Page Number	4	Schedule D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☒

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/75	11/83

Part II
Compensation In Excess Of $5000
Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☒

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction

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III. GENERAL (PUBLIC)

1. An ethical consideration under Cannon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

   As a member of the Tallahassee Bar Association, I am asked to spend time on a rotating basis (approximately once a year) to assume cases of persons in need of legal services who cannot afford to pay for these services.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

   I have been a member of a local Rotary Club since October 1985. Rotary International had a past practice of men only. This practice no longer exists.

AFFIDAVIT

I, KEVIN MICHAEL MOORE, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

October 2, 1989
(DATE)

K. M. Moore
(NAME)

(NOTARY)
NOTARY PUBLIC. STATE OF FLORIDA
MY COMMISSION EXPIRES: JAN. 18. 1991
BONDED THRU NOTARY PUBLIC UNDERWRITE